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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 02–001–2]

RIN 0579–AB53

Procedures for Reestablishing a Region as Free of a Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the recognition of regions to establish procedures that we will follow when a region that we recognize as free of an animal disease experiences an outbreak of that disease. The procedures include steps we will take to prevent the introduction of disease from that region and steps we will take to further assess the region's animal health status. The procedures will allow for timely reinstatement of the region's disease-free status if supported by the reassessment.

EFFECTIVE DATE: June 9, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, "Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions" (referred to below as the regulations), set out the process by which a foreign government may request recognition of the animal health status of a region or approval to export animals or animal products to the United States from a region based on the disease risk associated with animals or animal products from that region. As provided in § 92.2, each request must include information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher disease risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity.

Recognition by the Animal and Plant Health Inspection Service (APHIS) of a region's animal health status makes exports of animals and animal products from that region subject to a certain set of import conditions, depending on that region's animal health status. These import conditions are intended to ensure that animals and animal products imported from the region will not introduce animal diseases into the United States.

While the regulations in part 92 have provided for what can be described as the original recognition of the animal disease status of a region with respect to a particular disease, they have not described the actions that we will take when a region that we already recognize as free of a disease experiences an outbreak of that disease, nor have they described a process by which the region's disease-free status may be restored following its eradication of the disease.

To address this need, on June 24, 2003, we published in the **Federal Register** (68 FR 37426–37429, Docket No. 02–001–1) a proposal to establish procedures that we will follow when a region that we recognize as free of disease experiences an outbreak of that disease. Those procedures, which we proposed to set out in a new § 92.4, included steps we would take to prevent the introduction of disease from that region and steps we would take to further assess the region's animal health status. We proposed this action to allow for timely reinstatement of the region's disease-free status if supported by the reassessment.

We solicited comments concerning our proposal for 60 days ending August 25, 2003. We received 11 comments by that date. The comments were from representatives of domestic and foreign animal industry organizations, State veterinarians, a foreign government association, a representative of State government, and an individual. Most of the comments were generally supportive, although several asked for clarifications or minor adjustments to the proposed procedures. Three commenters did not appear to support the proposal. Their comments and the clarifications and adjustments requested by others are described below.

One commenter who opposed the proposal objected to the concept of regionalization, arguing that an area smaller than an entire country should not be accorded a separate disease status. He expressed the concern that disease could spread into a regionalized area through, among other means, the unauthorized movement of animals into that area.

We will not be making any changes to the final rule in response to these comments. International trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures—obligate APHIS to recognize regions, rather than only countries, for the purpose of regulating the importation of animals and animal products into the United States, and we have been doing so for several years. Our procedures for recognizing a region's disease status, including a region smaller than an entire country, are set out in § 92.2. We consider a number of factors, including the extent to which movement of animals and animal products is controlled and the level of biosecurity regarding such movements, the extent of an active disease control program and disease surveillance activities in the region, and the authority, organization, and infrastructure of the veterinary services organization in the region. We believe that an evaluation of these factors can justify recognition of a region smaller than an entire country, in accordance with part 92, and provide assurance that the region has the means to prevent the spread of disease into and from that region.

Another commenter who opposed the proposal maintained that reinstatement of the disease-free status of a region

must be done in accordance with the existing regulations in part 92. The commenter also maintained that any further regionalization of a region (*e.g.*, recognizing a region within a country) following a disease outbreak should also be done in accordance with the existing regulations.

We will not be making any changes to the final rule in response to these comments. We disagree with the commenter's assertion that reinstatement of disease-free status should be done in strict accordance with the existing regulations for original recognition of such status. We did not intend for the regulations in § 92.2 to apply in circumstances where an outbreak of a disease, or an increased incidence of disease, in a foreign region makes it necessary for the United States to take interim measures to protect its livestock from the foreign animal disease. In these cases, APHIS must take immediate action to prohibit or restrict imports from the region of concern. Such action may include publishing an interim rule to provide an appropriate basis for enforcing prohibitions or restrictions that may initially be announced administratively. An interim rule of this type is intended to be just that, an "interim" or "temporary" measure which would provide the immediate protection needed for animal health purposes. Such a rule gives APHIS an opportunity to evaluate the effectiveness of emergency response measures taken in the subject region to deal with the outbreak and to determine whether the outbreak is indeed a temporary situation or indicates a fundamental change in the region's disease status. If a region takes immediate and effective steps to control and stamp out the disease and satisfies any other requirements that it may be necessary to apply to that particular region, it should be promptly returned to its previous status.[1] APHIS will also take into consideration whether the subject region has met the minimum Office International des Epizooties (OIE) standards for restoration of free status. Our obligations under international trade agreements compel us to take no more restrictive actions than necessary to prevent the introduction of disease. Regarding the commenter's second point, in many cases, the evaluation of a region that led to our initial recognition of it as disease free also provides us with the information we need to determine whether an administrative unit within that region (*e.g.*, a political subdivision of a country) has sufficient control mechanisms in place to be recognized as a region with a separate disease status. We are taking steps to inform the public about the basis for our determining the administrative unit that may be recognized as a region if there is an outbreak of a disease. This determination is country specific and based on the controls existing in that country. For example, a final rule recognizing regions of the European Union for classical swine fever (CSF) status, which was published in the **Federal Register** on April 7, 2003 (68 FR 16922–16941, Docket No. 98–090–5), set out what we considered to be the appropriate administrative units, *i.e.*, regions, for Germany and Italy. Similarly, a notice of availability of our recent reassessment of the disease status of France and Spain for CSF, published in the **Federal Register** on November 24, 2003 (68 FR 65869–65871, Docket No. 98–090–6), set out the administrative units we would recognize in those countries.

The third commenter who opposed the proposed rule represented the European Commission (EC). This commenter stated that, in failing to recognize regionalization decisions made by the EC, the proposed rule was inconsistent with the Veterinary Equivalency Agreement between the EC and the United States concerning sanitary measures in the trade of live animals and animal products (Council Decision 98/258/EC).

We will not be making any changes to the final rule in response to this comment. Article 16 of the Veterinary Equivalency Agreement states, among other things, that, "Each Party shall implement the commitments and obligations arising from this Agreement in accordance with its laws and procedures." APHIS' customary regulatory procedures involve rulemakings such as this one. However, we are working to create mechanisms through rulemaking that will provide us with greater flexibility and reduce response time. This rulemaking is one example.

Several commenters suggested that our proposed procedures placed too much emphasis on the standards of the OIE, suggesting that OIE standards may not always reflect current science and may not be sufficient to protect U.S. livestock from disease. These commenters cited, in particular, the wording in both the preamble and rule text that said we intend to reassess the disease situation in a country "in accordance with OIE standards." One commenter also cited our statement in the preamble that, "If a region takes immediate and effective steps to control and stamp out the disease, we believe the region's disease-free status should be restored as quickly as possible once the region has met OIE requirements." That commenter noted that while OIE sets "standards," those standards are not "requirements."

We agree that OIE standards are not requirements, and we did not intend to imply that we would base our evaluation of a region's disease status solely on whether the region has satisfied the criteria contained in those standards. APHIS uses OIE's waiting period as a guideline; however, APHIS' evaluation of a region's disease status will be based not only on whether the region has met OIE standards for reinstatement of disease-free status, but also on consideration of all relevant information, including information obtained through public comments on both the initial interim rule and the notice of availability of our reassessment and information collected by or submitted to us through other means. We have modified § 92.4 (b)(1) in this final rule to clarify that all these factors will be taken into account when we conduct such evaluations.

Two commenters cautioned that we should not rush the process of reinstating a region's disease-free status. We agree that the process should not be rushed; however, we will not be making any changes to the final rule as a result of these comments, since we continue to believe that the procedures originally contained in proposed § 92.4 will give us additional flexibility in evaluating a region's disease status without reducing the thoroughness of the evaluation process.

Some commenters suggested that the list of possible actions to be taken after the reassessment of a region's disease status should include a provision allowing APHIS to modify the scope of products affected by the initial interim rule. We believe that the proposed rule did include such a provision. Proposed § 92.4(c) listed three possible actions that APHIS may take following a reassessment: (1) Publish a final rule that reinstates the disease-free status of the region, or a portion of the region, covered by the interim rule; (2) publish an affirmation of the interim rule that imposed prohibitions or restrictions on the imports of animals and animal products from that region; or (3) publish another document in the **Federal Register** for comment. Under the third option, we could solicit comments on the scope of products to be covered in any subsequent rulemaking.

[1] APHIS does not plan to use the procedures established by this rule to upgrade a region's status with respect to bovine spongiform encephalopathy (BSE).

One commenter questioned how APHIS will address regions that have a cycle of disease outbreaks. APHIS will carefully consider a pattern of disease outbreaks as we conduct our reassessment. A cycle of disease outbreaks may indicate that the region does not have the safeguards or resources to prevent future outbreaks. Under no circumstances will we reestablish a region's disease-free status when we believe that our reassessment does not support such a decision.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for this final rule. The economic analysis provides a cost-benefit analysis and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule establishes procedures that we will follow when a region that we recognize as free of a disease experiences an outbreak of that disease. The procedures include steps we will take to prevent the introduction of disease from that region and steps we will take to further assess the region's animal health status. The procedures will allow for a more timely reinstatement of the disease-free status of a region, or portion of a region, if supported by the reassessment.

As in the past, if a region that we recognize as free of a specified animal disease experiences an outbreak of that disease, we will take immediate action to prohibit or restrict imports of animals and animal products from that region to protect U.S. livestock. Restrictions and/or prohibitions may at first be announced administratively but are generally followed by an interim rule.

Previously, following the close of the comment period on the interim rule, we would publish an affirmation of the interim rule. Then, in order to restore the region's previous disease-free status, we would begin a new rulemaking with the publication of a proposed rule. After considering any comments we received during the comment period for the proposed rule, we would publish a final rule.

Under our new procedures, we will not proceed directly to an affirmation of the interim rule following the close of the comment period. As part of the reassessment process, we will consider all public comments we receive on the interim rule, as well as any additional information relevant to a decision to change the disease status of the region, including information collected by or submitted to us. Additionally, we will reassess the disease status of the region in the context of the standards of the OIE to determine whether it is necessary to continue the interim prohibitions or restrictions. Prior to taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, we will make information regarding our reassessment of the region's disease status available to the public for comment. We will announce the availability of this information by publishing a notice in the **Federal Register**. Based on the reassessment, including the comments we receive in response to the notice we publish, we will publish one of the following:

- A final rule that reinstates the disease-free status of the region, or a portion of the region covered by the interim rule;
- An affirmation of the interim rule that imposed prohibitions or restrictions on imports of animals and animal products from that region;
- Another document in the **Federal Register** for comment, if neither a final rule or interim rule is considered appropriate at that time (*e.g.*, we could publish a notice providing additional information for comment).

The new procedures will improve the process for reinstating a region's disease-free status while still providing an effective opportunity for public participation.

U.S. entities potentially affected by these changes in procedures include importers, domestic producers, and consumers. In particular, importers and consumers may benefit because imports affected by the change in disease status may resume earlier than under previous procedures. Domestic producers of close substitutes of the imports, who may have benefitted during the period when imports were restricted or prohibited, may incur losses associated with a resumption of imports that could occur sooner than under past procedures. Because import levels of potentially regulated commodities from the majority of disease-free foreign regions are low relative to total imports and domestic availability of those commodities, the new procedures will likely not lead to significant benefits or losses. This projection is based on a review of economic analyses we prepared for recent rulemakings revoking and reinstating the disease-free status of foreign regions, as well as an analysis of the types and volumes of commodities currently imported from regions we currently recognize as free of specified diseases. We believe that the main benefits associated with the change in procedures will be improved trade relations between the United States and foreign governments.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 92 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. A new section 92.4 is added to read as follows:

§ 92.4 Reestablishment of a region's disease-free status.

This section applies to regions that are designated in this subchapter D as free of a specific animal disease and then experience an outbreak of that disease.

(a) *Interim designation.* If a region recognized as free of a specified animal

disease in this subchapter D experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from that region. Such action may include publishing an interim rule that imposes prohibitions or restrictions that may be announced initially administratively. The interim rule may be given an effective date earlier than the date of signature or publication to affirm our authority for issuing previous administrative orders. The interim rule may impose prohibitions or restrictions on only a portion of the region previously recognized as free of a disease. In these cases, APHIS will provide information to the public as soon as possible regarding the basis for its decision to prohibit or restrict imports from the smaller area of that region previously recognized as free.

(b) *Reassessment of the disease situation.* (1) Following publication of an interim rule as described in paragraph (a) of this section, APHIS will reassess the disease situation in that region to determine whether it is necessary to continue the interim prohibitions or restrictions. In reassessing a region's disease status, APHIS will take into consideration the standards of the Office International des Epizooties for reinstatement of disease-free status, as well as all relevant information obtained through public comments on both the initial interim rule and the notice of availability of the reassessment or relevant information collected by or submitted to APHIS through other means.

(2) Prior to taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, APHIS will make information regarding its reassessment of the region's disease status available to the public for comment. APHIS will announce the availability of this information by publishing a notice in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section, including comments regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a final rule that reinstates the disease-free status of the region, or a portion of the region, covered by the interim rule;

(2) Publish an affirmation of the interim rule that imposed prohibitions or restrictions on the imports of animals and animal products from that region; or

(3) Publish another document in the **Federal Register** for comment.

Done in Washington, DC, this 4th day of May 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–10523 Filed 5–7–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. 04–011–1]

Highly Pathogenic Avian Influenza; Additional Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and unprocessed bird and poultry products from regions that have reported the presence of the H5N1 subtype of highly pathogenic avian influenza and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States. This action is necessary to prevent the introduction of highly pathogenic avian influenza subtype H5N1 into the United States.

DATES: This interim rule was effective February 4, 2004. We will consider all comments that we receive on or before July 9, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–011–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–011–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–011–1" on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information concerning bird and poultry products, contact Dr. Tracye Butler, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

For information concerning live birds and poultry, contact Dr. Julie Garnier, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including avian influenza (AI).

There are many strains of AI virus that can cause varying degrees of clinical illness in poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. Migratory waterfowl have proved to be the natural reservoir for this disease.

AI viruses can be classified into low pathogenic (LPAI) and highly pathogenic (HPAI) forms based on the

severity of the illness they cause. Most AI virus strains are LPAI and typically cause little or no clinical signs in infected birds. However, some LPAI virus strains are capable of mutating under field conditions into HPAI viruses.

HPAI is an extremely infectious and fatal form of the disease for chickens. HPAI can strike poultry quickly without any infection warning signs and, once established, the disease can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. One gram of contaminated manure can contain enough virus to infect 1 million birds.

In some instances, strains of HPAI viruses can be infectious to people. Human infections with AI viruses under natural conditions have been documented in recent years. Since December 2003, a growing number of Southeast Asian countries have reported outbreaks of HPAI responsible for the deaths of millions of birds and at least 22 humans.

The rapid spread of HPAI, with outbreaks occurring at the same time in a number of regions, is historically unprecedented and of growing concern for human and animal health. According to the World Health Organization, particularly alarming is the HPAI strain of most of these outbreaks, H5N1, which has crossed the species barrier and caused severe disease, with high mortality, in humans. The current avian flu outbreaks have caused significant concern among health authorities worldwide because of the potential for the human and avian flu viruses to swap genes, creating a new virus to which humans would have little or no immunity.

The regulations in § 94.6 restrict the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) exists. These regulations have thus far been effective in preventing the introduction of HPAI in the United States because all regions experiencing outbreaks of HPAI are also regions where END exists. However, because of the increasing threat of introducing HPAI into the United States, we have determined that stronger safeguards are needed. These additional safeguards will apply to all unprocessed bird and poultry carcasses, parts, and products from regions where HPAI subtype H5N1 is considered to exist, as well as to U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States.

Pet Birds of U.S. Origin

The current regulations in § 93.101 call for a 30-day home quarantine for all U.S. origin pet birds returning to the United States after spending more than 60 days in another region and a veterinary inspection at the port of entry for such birds returning to the United States after spending not more than 60 days in another country. We are amending the regulations to require all pet birds of U.S. origin that have spent any length of time in a region reporting incidents of HPAI subtype H5N1 to undergo a 30-day quarantine at a USDA facility.

In addition, we are requiring that all U.S. origin pet birds returning from any region, except for such birds returning from Canada and Mexico through a land border port, be accompanied by an import permit issued by APHIS. We are not requiring an import permit for U.S. origin pet birds returning to the United States from Canada or Mexico through a land border port because those birds are subject to an examination by an APHIS veterinarian at the border prior to entry; pet birds returning to the United States through an airport are not examined until they have already entered the country. This import permit will ensure that U.S. origin pet birds undergo appropriate examinations, including being swabbed for HPAI and END, before entering the United States. We believe these measures will mitigate the risk of introducing HPAI subtype H5N1 into the United States.

Performing and Theatrical Birds and Poultry of U.S. Origin

Currently, the regulations in part 93 do not require U.S. origin performing and theatrical birds and poultry to have an import permit or undergo a quarantine when returning to the United States from another region. For the same reasons discussed above with respect to pet birds, we are amending the regulations in §§ 93.101 and 93.201 to require U.S. origin performing or theatrical birds or poultry returning from any region, except for such birds or poultry returning from Canada or Mexico through a land border port, to be accompanied by an import permit. We are also adding requirements that U.S. origin performing and theatrical poultry returning from regions where HPAI subtype H5N1 exists undergo a 30-day quarantine at a USDA facility. U.S. origin performing or theatrical birds or poultry returning from all other regions, except Canada or Mexico, must undergo a 30-day home quarantine.

Unprocessed Bird and Poultry Carcasses, Parts, and Products

Section 94.6 of the regulations contains provisions for the importation of unprocessed bird and poultry carcasses, parts, and products into the United States from regions where END exists. As noted previously, our regulations in § 94.6 have been effective at preventing the introduction of HPAI in the United States because the regions from which bird and poultry parts and products are experiencing outbreaks of HPAI subtype H5N1 are all regions restricted because of END. Given the concerns described above, we believe it is necessary to establish regulations in part 94 that specifically address HPAI subtype H5N1. Therefore, we are amending the regulations to restrict the importation of unprocessed bird and poultry carcasses, parts, and products from regions where HPAI subtype H5N1 is considered to exist.

These new restrictions, which we are adding as a new § 94.6(e), provide that bird and poultry carcasses, parts, and products, may be imported from a region where HPAI subtype H5N1 exists only if accompanied by an import permit, and only if they are research or educational materials destined for a museum, educational institution, or research institution. These types of imports are generally in smaller quantities and are destined for controlled environments, thus they pose a lower risk of introducing HPAI subtype H5N1 in the United States. We have also added, as a new § 94.6(d), a list of regions (Cambodia, China, Indonesia, Japan, Laos, South Korea, Thailand, and Vietnam) where HPAI subtype H5N1 is considered to exist.

The regulations in part 95, in their present form, do not explicitly set out restrictions on imports into the United States of feathers, birds' nests, and bird trophies from regions with avian diseases like END and HPAI. We have allowed the entry of these articles, however, if, among other requirements, the articles are sent directly to an establishment approved by APHIS for the receipt and handling of restricted imported animal byproducts. We believe it is now necessary to explicitly restrict the entry of these types of products into the United States when they pose a risk of introducing HPAI subtype H5N1. Therefore, we are adding a new § 95.30 "Restrictions on entry of products and byproducts of poultry, game birds, or other birds from regions where highly pathogenic avian

influenza subtype H5N1 exists." This section provides that products and byproducts of birds and poultry, including feathers, birds' nests, and bird trophies from a region where HPAI subtype H5N1 exists may be imported only if the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI subtype H5N1 into the United States. The articles must be accompanied by a permit obtained from APHIS prior to their importation and must be moved and handled as specified on the permit.

These measures are considered necessary because of the present risk of HPAI subtype H5N1 introduction into the United States, but are not necessarily intended to be permanent. The restrictions and prohibitions described in this interim rule will be reviewed as more information on the situation in Southeast Asia becomes available. At a time when the Administrator deems that the affected regions have implemented proper procedures to control the spread of the disease and no longer pose a disease threat, we will reconsider the need for these restrictions.

Emergency Action

Emergency action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations to prohibit or restrict the importation of unprocessed bird, poultry, and bird and poultry products from regions that have reported the presence of HPAI subtype H5N1 and to establish procedures for issuing permits and quarantining U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States from these regions. This action is in response to recent numerous outbreaks of the disease in Southeast Asia. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

Eight South and Southeast Asian countries have reported outbreaks of HPAI subtype H5N1. HPAI subtype H5NI is of particular importance due to the threat posed to humans. However, the introduction of any strain of HPAI causes immediate and devastating losses to the poultry industry. During the 1983–84 HPAI subtype H2N2 outbreak in the United States, more than 17 million birds were destroyed, at a cost of nearly $65 million to the U.S. poultry industry. To understand the importance of restricting poultry imports, and thereby the necessity of protecting against introduction of H5N1 into the United States, we must consider the value of the poultry industry. Also, we will consider the potential impact to small entities in the case of H5N1 introduction.

U.S. import restrictions have limited imports of live poultry and poultry meat from the regions affected by this interim rule due to the presence of END in those regions. As a result, there have been no imports of these commodities from those regions in recent years during that time; therefore, there will be no discernable effect on domestic prices of poultry products due to this interim rule. The United States received no imports of unprocessed carcasses of poultry or poultry meat from the affected regions in 2002, and feathers account for the most valuable avian imports from these regions. Whereas the regulations have previously provided for the importation from regions affected with END of unprocessed carcasses and products of birds or poultry under certain conditions, this interim rule severely restricts these types of imports due to HPAI subtype H5N1.

Unprocessed down feathers have been the primary commercially traded import from regions that have reported the presence of HPAI subtype H5N1. In 2003, 127.2 metric tons of feathers were imported from the affected regions, with a cash value of $499,000.[1]

According to the Small Business Association (SBA), domestic companies engaging in feathers wholesaling come under the NAICS code 422590. SBA defines a small feather wholesaling entity as one that employs no more than 100 persons.[2] It is unclear at this time exactly how many feather wholesalers classified as small entities would be affected by this interim rule. However, according to 1997 Census data, there were 1,684 establishments with sales of more than $22 billion.[3] While the number of small entities in the feather wholesaling industry affected by this rule is uncertain, we think it unlikely that this interim rule will pose a significant impact to a substantial number of small businesses.

Other unprocessed poultry products of interest are bird nests and bird trophies. Unfortunately, as these are not commercially traded products, statistics regarding the number and value of these imports into the United States are unavailable. In any case, we do not believe the cost of restricting these imports will outweigh the benefit of preventing disease introduction.

To get an idea of the expected benefits of this interim rule, we must consider the domestic losses that could result in the introduction of HPAI subtype H5N1. The U.S. poultry industry is largely a vertically integrated industry with the majority of producers working under contract and producing poultry for a few big corporations. These entities would capture the benefits resulting from the prevention of an HPAI subtype H5N1 outbreak.

The United States is the world's largest producer of poultry meat and the second-largest egg producer behind China. Preliminary reports for the year 2002 indicate there were a total of 438.9 million chickens, excluding commercial broilers, with a cash value of $1.045 billion. In 2001, broiler production, raised for the purpose of meat production, totaled 8.389 billion broilers, with a combined live weight of more than 42.4 billion pounds. The value of broiler production for that year was more than $16.6 billion. In 2001, 85.7 billion eggs were produced with a cash value of $4.4 billion.[4] The United States is also the world's largest turkey producer. In 2001, turkey production totaled more than 272 million birds with a combined live weight of 7.154 billion pounds and a cash value of almost $2.8 billion.[5] Considering the

[1] USDA, *U.S. Trade Imports—HS 6-Digit Codes*. Washington, DC: Foreign Agricultural Service, 2004.

[2] Table of Size Standards based on NAICS 2003. Washington, DC: U.S. Small Business Administration, 2003.

[3] *1997 Economic Census: NAISC 422590*. Washington, DC: U.S. Census Bureau. (This is the most current published data available).

[4] USDA, *Agricultural Statistics 2003*. Washington, DC: National Agricultural Statistics Service, 2003. Estimates cover the 12-month period December 1 of the previous year through November 30.

[5] USDA, *Agricultural Statistics 2003*. Washington, DC: National Agricultural Statistics Service, 2003. Estimates based on turkeys placed September 1,

value and volume of production, a possible introduction of HPAI subtype H5N1 would result in a devastating blow to the U.S. poultry industry.

Prompted by outbreaks of HPAI subtype H5N1 that have been responsible for the deaths of millions of birds and at least 22 humans in South and Southeast Asia, this interim rule will severely restrict imports of unprocessed poultry and poultry products from regions reporting incidents of HPAI subtype H5N1. As a result of complying with END restrictions, there have been no imports of live poultry, poultry meat, or eggs from these regions in the past 4 years. The only commercially traded import that will be primarily affected by this interim rule, assuming no further spread of the disease to regions outside South Asia, is unprocessed down feathers. The benefits resulting from avoided HPAI subtype H5N1 introduction into the United States as a result of this interim rule far outweigh any costs imposed. In addition, we do not expect any resulting costs experienced by small entities to be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to February 4, 2004; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0245 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 04–011–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 04–011–1 and send your comments within 60 days of publication of this rule.

We are amending the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and unprocessed bird and poultry products from regions that have reported the presence of HPAI subtype H5N1 and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

Implementing these additional import requirements will necessitate the use of several information collection activities, including an Application to Import Controlled Materials or Transport Organisms and Vectors (VS Form 16–3), an Application for Import or In-Transit Permit (VS Form 17–129), a notarized declaration or affirmation, and a Pet Bird Owner Agreement (VS Form 17–8).

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Owners of U.S. origin pet birds and U.S. origin performing or theatrical birds or poultry returning to the United States, and U.S. importers of bird and poultry carcasses, parts, products, and byproducts of birds and poultry (including feathers, birds' nests, and bird trophies) from certain regions.

Estimated annual number of respondents: 5,000.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 10,000.

Estimated total annual burden on respondents: 5,000 hours.

(Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

■ Accordingly, we are amending 9 CFR parts 93, 94, and 95 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

2000, through August 31, 2001, and excludes young turkeys lost.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

■ 2. Section 93.101 is amended as follows:

■ a. Paragraph (c)(2) is revised to read as set forth below and the undesignated paragraph following paragraph (c)(2) is removed.

■ c. Paragraph (c)(3) is redesignated as paragraph (c)(4) and a new paragraph (c)(3) is added to read as set forth below.

■ d. Paragraph (f) is revised to read as set forth below.

■ e. By revising the OMB control number citation at the end of the section to read as follows: "(Approved by the Office of Management and Budget under control numbers 0579–0220 and 0579–0245)".

§ 93.101 General prohibitions; exceptions.

* * * * *

(c) * * *

(2)(i) Except for pet birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (c)(3) of this section, pet birds of United States origin that have not been outside the country for more than 60 days may be offered for entry under the provisions of paragraph (c)(1) of this section if:

(A) The pet birds are accompanied by an import permit issued by APHIS: *Provided,* that an import permit will not be required for pet birds returning from Canada or Mexico through a land border port; and

(B) The birds are also accompanied by a United States veterinary health certificate issued prior to the departure of the birds from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the birds prior to departure; and

(C) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the bird is the same as the one listed on the health certificate.

(ii) Except for pet birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (c)(3) of this section, pet birds of United States origin that have been outside the country for more than 60 days may be imported by their owner if:

(A) The pet birds are accompanied by an import permit issued by APHIS: *Provided,* that an import permit will not be required for pet birds returning from Canada or Mexico through a land border port; and

(B) The pet birds are found upon port of entry veterinary inspection to be free of poultry diseases; and

(C) The pet birds are accompanied by a United States veterinary health certificate issued prior to the departure of the birds from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the birds prior to departure; and

(D) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the bird is the same as the one listed on the health certificate; and

(E) The owner importing the pet birds signs and furnishes to the Administrator the following:

(*1*) A notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the bird or birds have not been in contact with poultry or other birds while out of the region (for example, association with other avian species at exhibitions or at aviaries); and

(*2*) An agreement on VS Form 17–8, obtainable from a Federal inspector at the port of entry, stating:

(*i*) That the birds will be maintained in confinement in his or her personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the birds are to be held and made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector; and

(*ii*) That appropriate Federal officials in the State of destination will be immediately notified if any signs of disease are noted in any of the birds or any bird dies during that period. The owner importing such birds must comply with the provisions of the aforementioned agreement before the birds may be released from confinement. Except for pet birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, lots of pet birds of United States origin which do not otherwise meet the requirements of paragraphs (c)(1) or (2) of this section may be offered for entry under the provisions of paragraph (c)(4) of this section.

(3) Any pet birds of United States origin that have been in any region listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1 exists, regardless of the length of time such birds have been outside of the United States, may only be imported through the port of Los Angeles, CA, Miami, FL, or New York, NY, and only under the following conditions:

(i) The birds meet the requirements of paragraphs (c)(2)(ii)(A) through (D) of this section; and

(ii) The birds are quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator in any specific case, at a USDA quarantine facility in accordance with § 93.106.

* * * * *

(f) *Performing or theatrical birds returning to the United States.* (1) Performing or theatrical birds of United States origin that are returning to the United States from Canada or Mexico may be imported if:

(i) The birds are found upon port of entry veterinary inspection to be free of avian diseases; and

(ii) The birds are accompanied by a United States veterinary health certificate issued prior to the departure of the birds from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the birds prior to departure; and

(iii) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the birds is the same as the one listed on the health certificate.

(2) Except for performing or theatrical birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (f)(3) of this section, performing or theatrical poultry of United States origin that have been outside the United States in a region other than Canada or Mexico may be imported if:

(i) The birds meet the requirements of paragraphs (f)(1)(i) through (iii) of this section; and

(ii) The birds are accompanied by an import permit issued by APHIS; and

(iii) The owner importing the birds signs and furnishes to the Administrator the following:

(A) A notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the birds have not been in contact with other birds while out of the region (for example, association with other avian species at exhibitions or at aviaries); and

(B) An agreement on VS Form 17–8, obtainable from a Federal inspector at the port of entry, stating:

(*1*) That the birds will be maintained in confinement in his or her personal possession separate and apart from all birds and other birds for a minimum of

30 days following importation at the address where the birds are to be held and made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector; and

(2) That appropriate Federal officials in the State of destination will be immediately notified if any signs of disease are noted in any of the birds or any birds die during that period. The owner importing such poultry must comply with the provisions of the aforementioned agreement before the birds may be released from confinement. Except for performing or theatrical birds that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, performing or theatrical birds of United States origin which do not otherwise meet the requirements of paragraphs (f)(1) or (2) of this section may be offered for entry under the provisions of § 93.101(c).

(3) Any performing or theatrical birds of United States origin that have been in any region listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1 exists may only be imported through the port of Los Angeles, CA, Miami, FL, or New York, NY, and only under the following conditions:

(i) The birds meet the requirements of paragraphs (f)(1)(i) through (iii) of this section; and

(ii) The birds are accompanied by an import permit issued by APHIS; and

(iii) The birds are quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator in any specific case, at a quarantine facility maintained by APHIS in accordance with paragraphs (c)(3)(ii) through (c)(3)(iv) of this section.

* * * * *

■ 3. Section 93.201 is amended as follows:

■ a. By revising paragraph (c) to read as set forth below.

■ b. By adding, at the end of the section, the following: "(Approved by the Office of Management and Budget under control number 0579–0245)".

§ 93.201 General prohibitions; exceptions.

* * * * *

(c) *Performing or theatrical poultry returning to the United States.* (1) Performing or theatrical poultry of United States origin that are returning to the United States from Canada or Mexico may be imported if:

(i) The poultry are found upon port of entry veterinary inspection to be free of poultry diseases; and

(ii) The poultry are accompanied by a United States veterinary health certificate issued prior to the departure of the poultry from the United States and the certificate shows the number from the leg band, tattoo, or microchip affixed to the poultry prior to departure; and

(iii) During port of entry veterinary inspection it is determined that the number from the leg band, tattoo, or microchip on the poultry is the same as the one listed on the health certificate.

(2) Except for performing or theatrical poultry that have been in any region where highly pathogenic avian influenza subtype H5N1 exists, which are subject to the provisions of paragraph (c)(3) of this section, performing or theatrical poultry of United States origin that have been outside the United States in a region other than Canada or Mexico may be imported if:

(i) The poultry meet the requirements of paragraphs (c)(1)(i) through (iii) of this section; and

(ii) The poultry are accompanied by an import permit issued by APHIS; and

(iii) The owner importing the poultry signs and furnishes to the Administrator the following:

(A) A notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the poultry have not been in contact with poultry or other birds while out of the region (for example, association with other avian species at exhibitions or at aviaries); and

(B) An agreement on VS Form 17–8, obtainable from a Federal inspector at the port of entry, stating:

(*1*) That the poultry will be maintained in confinement in his or her personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the poultry are to be held and made available for health inspection and testing by Department inspectors upon request until released at the end of such period by such an inspector; and

(*2*) That appropriate Federal officials in the State of destination will be immediately notified if any signs of disease are noted in any of the poultry or any poultry die during that period. The owner importing such poultry must comply with the provisions of the aforementioned agreement before the poultry may be released from confinement.

(3) Any performing or theatrical poultry of United States origin that have been in any region listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1 exists may only be imported through the port of Los Angeles, CA, Miami, FL, or New York, NY, and only under the following conditions:

(i) The poultry meet the requirements of paragraphs (c)(1)(i) through (iii) of this section; and

(ii) The poultry are accompanied by an import permit issued by APHIS; and

(iii) The poultry are quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator in any specific case, at a quarantine facility maintained by APHIS in accordance with §§ 93.209 and 93.210.

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 4. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 5. Section 94.6 is amended as follows:

■ a. By revising the title of the section to read as set forth below.

■ b. In paragraphs (b)(6), (c)(3), and (c)(4), by removing the words "paragraph (d)" and adding the words "paragraph (f)" in their place.

■ c. By redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as set forth below.

■ d. By revising the OMB control number citation at the end of the section to read as follows: "(Approved by the Office of Management and Budget under control numbers 0579–0015 and 0579–0245)".

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 is considered to exist.

* * * * *

(d) Highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist in the following regions: Cambodia, China, Indonesia, Japan, Laos, South Korea, Thailand, and Vietnam.

(e) *Carcasses, and parts or products of carcasses, from regions where HPAI subtype H5N1 is considered to exist.* Carcasses, and parts or products of carcasses, of poultry, game birds, or other birds may be imported from a

region where HPAI subtype H5N1 exists only if they are imported for scientific, educational, or research purposes and the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI subtype H5N1 into the United States. The articles must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (f) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of HPAI subtype H5N1 into the United States.

* * * * *

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 6. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 7. A new § 95.30 is added to read as follows:

§ 95.30 Restrictions on entry of products and byproducts of poultry, game birds, or other birds from regions where highly pathogenic avian influenza (HPAI) subtype H5N1 exists.

(a) Products or byproducts, including feathers, birds' nests, and bird trophies, of poultry, game birds, or other birds may be imported from a region listed in § 94.6(d) of this subchapter as a region where HPAI subtype H5N1 exists only if the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI subtype H5N1 into the United States. The articles must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (b) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of HPAI subtype H5N1 into the United States.

(b) To apply for a permit, contact the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

(Approved by the Office of Management and Budget under control number 0579–0245)

Done in Washington, DC, this 4th day of May, 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–10524 Filed 5–7–04; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1192]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the San Antonio check processing office of the Federal Reserve Bank of Dallas and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Dallas. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

DATES: The final rule will become effective on July 10, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for "local" checks are considered "nonlocal."

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the San Antonio office of the Federal Reserve Bank of Dallas will cease processing checks on July 10, 2004. As of that date, banks with routing symbols currently assigned to the San Antonio office for check processing purposes will be reassigned to the Dallas Reserve Bank's head office. As a result of this change, some checks that are drawn on and deposited at banks located in the San Antonio and Dallas check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

The Board accordingly is amending the lists of routing symbols assigned to Eleventh District check processing offices to reflect the transfer of operations from San Antonio to Dallas and to assist banks in identifying local and nonlocal banks. These amendments are effective July 10, 2004, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at

[1] For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] *See* 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *http://www.frbservices.org.*

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

some other Reserve Bank offices, as described in the May 2003 **Federal Register** document.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendices are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of "check-processing region." Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the San Antonio check processing office of the Federal Reserve Bank of Dallas and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Dallas. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The Eleventh Federal Reserve District routing symbol list in appendix A is revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Eleventh Federal Reserve District

[Federal Reserve Bank of Dallas]

Head Office

1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122
1123	3123
1140	3140
1149	3149
1163	3163

Houston Branch

1130	3130
1131	3131

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 4, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–10514 Filed 5–7–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Insulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for the veterinary prescription use of an injectable suspension of zinc insulin of porcine origin for the reduction of hyperglycemia and hyperglycemia-associated clinical signs in dogs with diabetes mellitus.

DATES: This rule is effective May 10, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.gov.*

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed NADA 141–236 for the veterinary prescription use of VETSULIN (porcine zinc insulin) Suspension for the reduction of hyperglycemia and hyperglycemia-associated clinical signs in dogs with diabetes mellitus. The NADA is approved as of April 1, 2004, and the regulations are amended in part 522 (21 CFR part 522) by adding § 522.1160 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning April 1, 2004.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.1160 is added to read as follows:

§ 522.1160 Insulin.

(a) *Specifications.* Each milliliter of porcine zinc insulin suspension

contains 40 international units (IU) of insulin.

(b) *Sponsor.* See No. 057926 in § 510.600 of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* (i) Administer by subcutaneous injection. An initial once-daily dose, administered by subcutaneous injection concurrently with or right after a meal, is calculated as follows:

Body Weight	Initial Dose
<10 kg[1] (<22 lb[2])	1 IU/kg + 1 IU
10 to 11 kg (22 to 24 lb)	1 IU/kg + 2 IU
12 to 20 kg (25 to 44 lb)	1 IU/kg + 3 IU
>20 kg (>44 lb)	1 IU/kg + 4 IU

[1] kg means kilograms.
[2] lb means pounds.

(ii) Adjust the once-daily dose described in paragraph (c)(1)(i) of this section at appropriate intervals based on clinical signs, urinalysis results, and glucose curve/spot check values until adequate glycemic control has been attained. Twice-daily therapy should be initiated if the duration of insulin action is determined to be inadequate. If twice-daily treatment is initiated, the two doses should be 25 percent less than the once daily dose required to attain an acceptable nadir.

(2) *Indications for use.* For the reduction of hyperglycemia and hyperglycemia-associated clinical signs in dogs with diabetes mellitus.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 23, 2004.

Catherine P. Beck,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–10498 Filed 5–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[Docket No. FHWA–2004–17321]

RIN 2125–AF02

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Specific Service and General Service Signing for 24-Hour Pharmacies

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the rule that prescribes the use of the 2003 edition of the Manual on Uniform Traffic Control Devices (MUTCD) to permit the use of Specific Service and General Service signing to assist motorists in locating licensed 24-hour pharmacy services open to the public. These changes are designated as Revision No. 1 to the 2003 Edition of the MUTCD.

DATES: *Effective date:* This interim final rule is effective July 21, 2004. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 21, 2004.

Comment date: Comments relating to the technical details of the MUTCD amendment must be received on or before June 30, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit comments electronically at *http://dms.dot.gov/submit*, or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitting comments). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., *e.t.*, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). Persons making comments may review U.S. DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may view the statement at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations (HOTO–1), (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e. t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's Home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

On January 23, 2004, the President signed, thereby enacting into law, the Consolidated Appropriations Act, Fiscal Year 2004 (the Act), Public Law 108–199, 118 Stat. 3. Division F of the Act

(the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, at 118 Stat. 279), Title I, section 124, directs the Secretary of Transportation to amend the MUTCD to include a provision permitting information to be provided to motorists to assist motorists in locating licensed 24-hour pharmacy services open to the public. The Act also allows placement of logo panels that display information disclosing the names or logos of pharmacies that are located within three miles of an interchange on the Federal-aid system [1]. The FHWA has developed changes to the text and figures of the MUTCD to implement the requirements of the Act and provide for the uniformity of signing for pharmacy services when jurisdictions choose to install such signs.

Discussion of Amendments Related to Pharmacy Signing—Part 2 Signs

1. In Section 2D.45 General Service Signs (D9 Series), the FHWA revises the second STANDARD statement to remove the list of legends for various services. This list was incomplete in that it did not include some of the types of services that had been previously added to the MUTCD for General Service signing. Rather than adding Pharmacy and other services that had been missing from the list, the FHWA amends the sentence to be general in nature, applying to all types of General Service signs, including Pharmacy signs. The text of the second standard statement will now state: "General Service signs, if used at intersections, shall be accompanied by a directional message."

Consistent with the requirements of the Act, the FHWA revises the third STANDARD statement to add the requirement that the Pharmacy (D9–20) sign shall only be used to indicate the availability of a pharmacy that is open, with a State-licensed pharmacist on duty, 24 hours per day, seven days per week and that is located within 3 miles of an interchange on the Federal-aid system. The D9–20 sign shall have a 24 HR (D9–20) plaque mounted below it. The Act refers to "licensed pharmacy services." The States license pharmacy service by requiring pharmacists to be licensed, according to criteria set by each State, in order to practice the profession of pharmacy and dispense prescription medicines to the public. Retail pharmacies employ State-licensed pharmacists to perform this service in their stores[2].

The FHWA also revises Figure 2D–11 General Service Signs to add a new D9–20 Pharmacy symbol sign, with a white "Rx" symbol and border on a blue background, and a D9–20a plaque having white "24 HR" text and border on a blue background. The "Rx" symbol is widely used in commercial signing and other media to denote medicinal prescriptions available at pharmacies. The textbook "Remington's Pharmaceutical Sciences" states: "The Rx symbol generally is understood to be a contraction of the Latin verb recipe, meaning 'take thou' or 'you take.' Some historians believe this symbol originated from the sign of Jupiter, employed by the ancients in requesting aid in healing. Gradual distortion through the years has led to the symbol currently used. Today, the symbol is representative of both the prescription and pharmacy itself."[3] Also, in 1997 the Attorney General of the State of Kansas issued Opinion No. 97–8 that "the taking, use or exhibition of the symbol "Rx" is limited to licensed pharmacists and entities which employ licensed pharmacists." [4] The FHWA believes that the simplicity and boldness of the Rx symbol as shown in Figure 2D–11 will aid in recognition, conspicuity, and legibility for road users, as compared to other possible symbols involving mortar and pestle or other similar devices.

2. In Section 2E.51 General Service Signs, the FHWA revises the first guidance statement to renumber existing item F to become item G and to insert as new item F the recommended criteria for availability of pharmacy services shown on General Service signs. The criteria for pharmacy services are that the pharmacy must be open, with a State-licensed pharmacist on duty, 24 hours per day, seven days per week and located within 4.8 km (3 miles) of an interchange on the Federal-aid system. These criteria correspond to the requirements of the Act.

Also, in the third STANDARD statement, the FHWA adds Pharmacy to the list of services for which one or more legends shall be carried on General Service signs.

The FHWA amends the fourth option statement to allow the Pharmacy (D9–20) symbol as well as the Tourist Information (D9–18) symbol to be substituted on symbolic (D9–18) General Service signs in the last position. Further, the FHWA changes the parenthetical phrase "(four services)" in the first sentence of this paragraph to "(four or six services)" for clarity and to correctly reflect that six services may be displayed on symbolic General Service signs, as stated previously in Section 2E.51.

3. The FHWA revises Figure 2E–42 Examples of General Service Signs (with Exit Numbering) to include additional examples of the D9–18a and D9–18 General Service signs that illustrate the use of the pharmacy word legend and pharmacy symbol on these signs.

4. In Section 2F.01 Eligibility, the FHWA adds to the second standard a statement that distances to eligible 24-hour pharmacies shall not exceed 4.8 km (3 miles) in either direction of an interchange on the Federal-aid system.

In addition, the FHWA amends the third guidance statement to indicate that distances to eligible services other than pharmacies should not exceed 4.8 km (3 miles) in either direction.

The FHWA also amends the second option statement to specifically exempt pharmacies from the provision that allows the 4.8 km (3 mi) limit to be extended for eligibility for Specific Service signs when eligible facilities are not available within the 4.8 km (3 mi) limit or choose not to participate.

Finally, the FHWA adds a standard statement at the end of the section listing criteria that must be met for a pharmacy to qualify for Specific Service signing if a jurisdiction elects to provide Specific Service signing for pharmacies. Both of the following criteria must be met: (1) The pharmacy shall be continuously operated 24 hours per day, seven days per week, and shall have a State-licensed pharmacist on duty at all times, and (2) the pharmacy shall be located within 4.8 km (3 miles) of an interchange on the Federal-aid system. These criteria correspond to those specified in the Act.

5. In Section 2F.02 Application, the FHWA amends the standard statement to include 24-hour pharmacy as the first service type that is to be displayed in successive Specific Service signs in the direction of traffic. In this same standard, the FHWA adds the word message 24-hour pharmacy to the list of word messages on Specific Service signs.

In the option statement, the FHWA also removes the list of various specific services that may be signed on any class of highway. This list was incomplete in that it did not include some of the types of services that had been previously added to the MUTCD for Specific

[1] Federal-aid systems are defined in 23 U.S.C. 101 and 103.

[2] Information about licensing of pharmacists may be found on the website of the National Association of Boards of Pharmacy, at the following URL: *http://www.nabp.net.*

[3] Remington: The Science and Practice of Pharmacy, 20th edition, 2000, page no. 1688.

[4] This Opinion may be viewed at *http://kscourts.org/opinions/1997/1997–008.htm.*

Service signing. Rather than adding Pharmacy and other services that had been missing from the list, the FHWA amends the sentence to be general in nature, applying to all types of Specific Service signs, including those for Pharmacy services. The text will now indicate that Specific Service signs may be used on any class of highway.

6. In Section 2H.04 Regulatory and Warning Signs, in Table 2H–1 Category Chart for Symbols, the FHWA amends the Motorist Services series to add the 24–Hour Pharmacy symbol as new number RM–230. With the establishment of the new symbol for pharmacy in the D9 series of symbols for General Service signing, the FHWA believes it is appropriate for consistency and uniformity to provide for this symbol to be used in Recreational and Cultural Interest Area signing as well. The other D9 series symbols are already included in Chapter 2H for use with Recreational and Cultural Interest Area signing.

7. In Section 2H.08 Placement of Recreational and Cultural Interest Area Symbol Signs, the FHWA amends Figure 2H–5 Recreational and Cultural Interest Area Symbol Signs (Sheet 2 of 5) to include the 24-hour Pharmacy (RM–230) symbol sign. This sign consists of a white "Rx" symbol and border on a square brown background with an integral supplemental plaque having a white "24 HR" legend and border on a rectangular brown background.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The FHWA has determined that prior notice and comment is impracticable and contrary to the public interest due to a congressionally imposed deadline. Section 124, Division F, Title I Consolidated Appropriations Act, 2004, requires that the Secretary of Transportation amend the MUTCD within 6 months of the effective date of the Act to include a provision permitting information to be provided to motorists to assist motorists in locating licensed 24-hour pharmacies. Therefore, taking into account Congress's expectation that this regulation will be issued in July 2004, the FHWA is faced with a situation in which the necessary and timely required execution of the required changes to the MUTCD would be prevented by undertaking a rulemaking proceeding prior to the adoption of the necessary changes to the MUTCD. In order to meet the congressionally mandated deadline, the FHWA is adopting the change to the MUTCD with as much notice as practicable by issuing this interim final rule and inviting public comment before the final regulation is issued. Furthermore, it is contrary to the public interest to further delay the ability of the States to provide this pertinent information to the traveling public. Accordingly, for the reasons listed above the agency finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and opportunity for comment.

Comments received will be considered in evaluating whether any changes to the technical details of the revised MUTCD text and figures in this interim final rule are required. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. Including 24-hour pharmacies in General and Specific Service signs is required by law (see section 124 Division F, Title I, of Public Law 108–199, January 23, 2004.) States and other jurisdictions are not required to install signs for pharmacy services, but if they elect to do so, these amendments to the MUTCD will create uniformity in how the Pharmacy signs are used on public roads.

These changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. This action adds General Service and Specific service signing for optional use by States to provide motorist information concerning pharmacies in order to aid the traveling public. States are not included in the definition of small entity set forth in 5 U.S.C. 601. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA will reexamine this certification after reviewing the comments to this rule.

Unfunded Mandates Reform Act of 1995

This interim final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. States and other jurisdictions are not required to install signs for pharmacy services, but if they elect to do so, these amendments to the MUTCD will create uniformity in how the signs are used on public roads.

Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made by the Federal government. The Federal-aid highway program permits this type of flexibility to the States.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These amendments are in keeping with the Secretary of Transportation's

authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and changes made to this rule are directed at enhancing safety. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that this interim final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government; and will not preempt tribal law. The requirements set forth in this interim final rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This interim final rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Under Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, this interim final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionally affect children.

Executive Order 12630 (Taking of Private Property)

This interim final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

This interim final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and this interim final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

Issued on: May 3, 2004.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

■ 1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways—[Amended]

■ 2. Revise § 655.601(a) to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003 Edition, including Revision No. 1, FHWA, dated July 21, 2004. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* It is available for inspection and copying at the Federal Highway Administration, 400 Seventh Street, SW., Room 3408, Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' Web site at: *http://mutcd.fhwa.dot.gov.*

* * * * *

[FR Doc. 04–10491 Filed 5–7–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–11; Re: Notice No. 11]

RIN 1513–AC81

Columbia Gorge Viticultural Area (2002R–03P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Columbia Gorge viticultural area in Hood River and Wasco Counties, Oregon, and Skamania and Klickitat Counties, Washington, approximately 60 miles east of Portland, Oregon. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase.

DATES: *Effective Date:* July 9, 2004.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 6660 Delmonico Drive, #D422, Colorado Springs, CO 80919; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

TTB Background

Homeland Security Act Impact on Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms into the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. TTB regulates wine labeling, including viticultural area designations.

Background on Viticultural Areas

Tax and Trade Bureau Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions, and the Secretary has delegated authority to administer those regulatory provisions to TTB.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced in that area.

Impact on Current Wine Labels

Viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any label references that suggest an origin other than the true place of origin of the wine.

With the establishment of this viticultural area, bottlers who use "Columbia Gorge" as a brand name, including a trademark, or in other label references to indicate the origin of the wine must ensure that their product is eligible to use the name of the viticultural area as an appellation of origin and that the use of the name is otherwise not misleading as to the origin of the wine. For a wine to be eligible to use a name listed in part of our regulations as an appellation of origin, at least 85 percent of the grapes used to make the wine must have been grown within the viticultural area. If the wine is not eligible to use the viticultural area name and such name appears in the brand name of the wine, bottlers must change the brand name of that wine and obtain approval of a new label.

Different rules apply if a wine in this category has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i) for details.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as specified in the petition;
- Evidence that growing conditions, such as climate, soils, elevation, physical features, etc., distinguish the proposed area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features shown on United States Geological Survey (USGS) maps or USGS-approved maps; and
- Copies of the appropriate map(s) with the boundary prominently marked.

Columbia Gorge Petition

Mark Wharry, for the Columbia River Gorge Wine Growers Association, petitioned ATF to establish "Columbia Gorge" viticultural area in Hood River and Wasco Counties, Oregon, and Skamania and Klickitat Counties, Washington. The 280 square mile Columbia Gorge viticultural area is located about 60 miles east of Portland, Oregon, straddles the Columbia River for 15 miles, and extends into south-central Washington and north-central Oregon. The area surrounds Hood River, Oregon, and White Salmon, Washington, and is generally bordered by B Z Corner, Washington, on the north; Lyle, Washington, on the east; Parkdale, Oregon, on the south; and Vinzenz Lausmann State Park, Oregon, on the west. The area is just west of the established Columbia Valley viticultural area and shares a part of its border with that area.

Supporting Evidence for Establishment of Columbia Gorge

Evidence That the Name of the Area is Locally or Nationally Known

Local residents know this narrow, winding valley, with its steeply rising bluffs as "the Gorge," "Columbia Gorge," and "Columbia River Gorge," and debate whether the name should be "Columbia Gorge" or "Columbia River Gorge," since they use both terms. The term "Columbia River Gorge" often appears as a more formal title, such as the Columbia River Gorge National Scenic Area and the Columbia River Gorge National Fish Hatcheries.

The "Columbia Gorge" name is the most common usage, as stated in the petition, and connotes an area smaller in size than the Federally designated Columbia River Gorge National Scenic Area. Examples of this usage include the Columbia Gorge Interpretive Center of the Skamania County Historical Society, the Columbia Gorge Discovery Center of the Wasco County Historical Museum, and various businesses and tourist attractions. Promotional groups such as the Skamania County Chamber of Commerce, Cascade Locks, use maps titled "Experience the Columbia Gorge" and "Heart of the Columbia Gorge."

Historical and Current Evidence That Supports the Boundary

Growers have raised grapes in the Columbia Gorge for over a century. In the 1880s, the Jewitt family, founders of the town of White Salmon, Washington, built terraces on a wide south-facing slope on the bluff above Bingen, Washington. They planted American vines that they had brought with them from Illinois. Also, the pioneering Balfour and Meress families brought grape cuttings to the Columbia Gorge. John Balfour, the youngest son of English Lord Balfour, planted grape vines in the early 1900s near the current location of Lyle, Washington. Leonis and Elizah Meress brought grape cuttings to the area from their native Adele Nord, a village in one of France's

coldest regions. Some of the vinifera vines they planted are still alive and have withstood temperatures well below zero.

Interest in grape growing in the Columbia Gorge was renewed in the early 1960s when experimental plots were planted in White Salmon, Washington. Later, commercial plots were planted under the direction of Washington State University. Today the Columbia River Gorge Wine Growers Association is comprised of 24 growers and 4 wineries. Currently, 284 acres are planted to wine grapes in the Columbia Gorge viticultural area, with more being planted each year.

Evidence of Distinctive Growing Conditions

The Columbia Gorge viticultural area's boundary is based on a combination of topographic, soil, and climatic factors that contrast with the nearby Columbia Valley and Willamette Valley viticultural areas. Much of the boundary line is the 2,000-foot elevation line, which encloses lower elevations and flatter agricultural areas with loamy soils. Above the 2,000-foot elevation boundary line the terrain becomes steeper and has gravelly soils more suitable for timber.

Topography

The Columbia River, twisting and turning on a westbound course, carved the Columbia Gorge, with its sides of steep cliffs, into the landscape. These sides range from sheer rock faces, comprised of volcanic outcroppings of igneous and metamorphic rock, to gentle stair-step benchlands formed by prehistoric lava flows. These benchlands have deep soil and good sun exposure, making them desirable for vineyards.

The Gorge funnels the Pacific's moist marine air to its west and the drier inland air to its east, back and forth. The Columbia Gorge viticultural area benefits from these prevailing winds, which moderate temperatures that otherwise might be warmer in the summer and cooler in the winter.

Soils

Soil types within the boundaries of the Columbia Gorge viticultural area are silty loams, as opposed to the more gravelly soils found outside the area. As the valleys on both the Washington and Oregon sides of the area slope up to the surrounding hills, the terrain becomes much steeper, and the soil types change noticeably.

Permeability of the silty loams found within the Columbia Gorge viticultural area is slow to moderate, and the available water capacity is high. Effective rooting depth is 60 inches or more. Soils include Chemawa, Underwood Loam, McGowen, Wyest Silt Loam, Van Horn, Parkdale Loam, and Oak Grove Loam series.

By contrast, the soils immediately surrounding the Columbia Gorge viticultural area, both above the 2,000-foot elevation line and eastward to the Columbia Valley, are generally gravelly with higher permeability. These soils typically support sloped timber areas at more than 2,000 feet above sea level. Examples of soils outside the area are the Steeper McElroy, Undusk Gravelly Loam, Husum Gravelly Loam, Rock Outcrop, Bins-Bindle, Yallani, and Hesslan-Skyline series.

Rainfall

Yearly rainfall totals determine the eastern and western borders of the Columbia Gorge viticultural area. To the west, the land has more rainfall, cloud cover, and vegetative growth, which results in benchlands unsuitable for viticulture. To the east, the terrain is more arid.

Annual rainfall within the Columbia Gorge viticultural area ranges from 30 inches on the west side of the Hood River, Oregon, to 18 inches near its eastern boundary at Lyle, Washington. By comparison, west of the Columbia Gorge viticultural area boundary the Bonneville Dam averages 77.54 inches and Skamania, Washington, averages 85.49 inches of annual rainfall. To the east of the boundary line, The Dalles, Oregon, averages 14.52 inches and Yakima, Washington, averages 8.21 inches of rainfall annually.

Temperature

The average growing temperatures within the Columbia Gorge viticultural area range from 62 degrees (Appleton and Wind River, Washington) to 65 degrees (Hood River, Oregon), as compared to 61 degrees to the west in Skamania and 71.6 degrees to the east in The Dalles. In general, grapes grown in this viticultural area are early varietals, such as Pinot Noir and Gewurztraminer, which require fewer high temperature days. By contrast, the Columbia Valley viticultural area is able to grow much later varieties, *e.g.*, Merlot and Cabernet Sauvignon, due to significantly higher degree growing days.

Rulemaking Proceedings

Notice of Proposed Rulemaking

Comments

TTB published a notice of proposed rulemaking regarding the establishment of the Columbia Gorge viticultural area in the June 27, 2003, **Federal Register** as Notice No. 11 (68 FR 38251). In that notice, TTB requested comments by August 26, 2003, from anyone interested. We received 16 favorable comments and no unfavorable comments. Washington wine industry members provide the majority of comments. Members of the public, a home winemaker, and a restaurant owner also commented favorably on the establishment of the Columbia Gorge viticultural area.

Regulatory Analyses and Notices

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. It imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of the Columbia Gorge viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is N.A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

■ For the reasons discussed in the preamble, we amend title 27, Code of Federal Regulations, part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. Add a new § 9.178 to subpart C to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.178 Columbia Gorge.

(a) *Name.* The name of the viticultural area described in this section is "Columbia Gorge".

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Columbia Gorge viticultural area are 10 United States Geological Survey, 1:24,000 scale, topographic maps. They are—

(1) Hood River Quadrangle, Oregon—Washington, 1994;

(2) Northwestern Lake Quadrangle, Washington, 1983;

(3) Husum Quadrangle, Washington—Klickitat Co., 1994;

(4) Appleton Quadrangle, Washington—Klickitat Co., 1994;

(5) Lyle Quadrangle, Washington—Oregon, 1994;

(6) Brown Creek Quadrangle, Oregon, 1994;

(7) Ketchum Reservoir Quadrangle, Oregon, 1994;

(8) Parkdale Quadrangle, Oregon—Hood River Co., 1994;

(9) Dee Quadrangle, Oregon—Hood River Co., 1994; and

(10) Mt. Defiance Quadrangle, Oregon—Washington, 1994.

(c) *Boundary.* The Columbia Gorge viticultural area is located in Hood River and Wasco Counties, Oregon, and Skamania and Klickitat Counties, Washington. The area's point of beginning is on the Hood River map, at the intersection of Washington State Highway 14 and the R9E–R10E line, close to Tunnel 4, on the north bank of the Columbia River. From this point, the boundary line—

(1) Goes 1.5 miles straight north along the R9E–R10E line to the northwest corner of section 19, T3N, R10E (Hood River Quadrangle);

(2) Continues 2 miles straight east along the section line to the northeast corner of section 20, T3N, R10E (Hood River Quadrangle);

(3) Goes 4.1 miles straight north along the section line, crossing onto the Northwestern Lake map, to the northwest corner of section 33, T4N, R10E (Northwestern Lake Quadrangle);

(4) Continues 1 mile straight east on the section line to the northeast corner of section 33, T4N, R10E (Northwestern Lake Quadrangle);

(5) Goes 1 mile straight north on the section line to the northwest corner of section 27, T4N, R10E (Northwestern Lake Quadrangle);

(6) Continues 1 mile straight east on the section line to the northeast corner of section 27, T4N, R10E (Northwestern Lake Quadrangle);

(7) Goes 3.8 miles north on the section line to its intersection with the T4N–T5N line, R10E (Northwestern Lake Quadrangle);

(8) Continues 4 miles straight east on the T4N–T5N line, crossing onto the Husum map, to the northeast corner of section 5, R11E (Husum Quadrangle);

(9) Goes 2 miles straight south on the section line to the southwest corner of section 9, T4N, R11E (Husum Quadrangle);

(10) Continues 2 miles straight east on the section line to the northeast corner of section 15, T4N, R11E (Husum Quadrangle);

(11) Goes 3 miles straight south on the section line to the southwest corner of section 26, T4N, R11E (Husum Quadrangle);

(12) Continues 2 miles straight east on the section line, crossing onto the Appleton map, to the R11E–R12E line (Appleton Quadrangle);

(13) Goes 1.25 miles straight south on the R11E–R12E line to its intersection with the 2,000-foot contour line near the northeast corner of section 1, T3N (Appleton Quadrangle);

(14) Continues 11 miles south along the meandering 2,000-foot contour line through sections 1 and 12; then generally east through sections 7, 18, 8, and 9 to section 10; then generally north, weaving back and forth between sections 3, 4, 33, and 34; then south to section 3, until the 2,000-foot contour line first intersects the section line between sections 2 and 3, near a creek and an unnamed light duty road, T3N, R12E (Appleton Quadrangle);

(15) Goes 5.1 miles straight south on the section line, crossing onto the Lyle map, and continuing south until it intersects with the Klickitat River along the section 34 east boundary line, T3N, R12E (Lyle Quadrangle);

(16) Continues 0.9 mile generally southwest along the Klickitat River until it joins the Columbia River, and then continues 0.4 mile southwest in a straight line to the Washington-Oregon State line in the center of the Columbia River, section 3, T2N, R12E (Lyle Quadrangle);

(17) Follows the Oregon-Washington state line 2.4 miles generally southeast until it intersects with a northward extension of the R12E–R13E line, T2N (Lyle Quadrangle);

(18) Goes 11 miles straight south on the R12E–R13E line, crossing onto the Brown Creek map, to its intersection with the T1N–T1S Base Line at the southeast corner of section 36 (Brown Creek Quadrangle);

(19) Continues 6.1 miles straight west along the T1N–T1S Base Line, crossing onto the Ketchum Reservoir map, to its intersection with the R11E–R12E line at the southeast corner of section 36 (Ketchum Reservoir Quadrangle);

(20) Goes 6 miles straight north on the R11E–R12E line to its intersection with the T1N–T2N line at the northeast corner of section 1 (Ketchum Reservoir Quadrangle);

(21) Continues 6.2 miles straight west on the T1N–T2N line, crossing onto the Parkdale map, to its intersection with the R10E–R11E line at the southeast corner of section 36 (Parkdale Quadrangle);

(22) Goes 1.85 miles south on the R10E–R11E line to its intersection with the 2,000-foot contour line near the southeast corner of section 12, T1N, R10E (Parkdale Quadrangle);

(23) Continues 10.1 miles along the meandering 2,000-foot contour line generally southwest through sections 12, 13, 14, 23, 22, 26, 27, and 34 in T1N, and section 4 in T1S, to its intersection with the section 4 south boundary line, T1S, R10E (Parkdale Quadrangle);

(24) Goes 2.4 miles straight west along the section line to its intersection with the R9E–R10E line, just west of Trout Creek, at the southwest corner of section 6, T1S (Parkdale Quadrangle);

(25) Continues 1 mile straight north along the R9E–R10E line to its intersection with the T1S–T1N Base Line at the northwest corner of section 6 (Parkdale Quadrangle);

(26) Goes 1.3 miles straight west along the T1S–T1N Base Line, crossing onto the Dee map, to its intersection with the R9E–R10E line at the southwest corner of section 21 (Dee Quadrangle);

(27) Continues 3.1 miles north along the R9E–R10E line to the southeast corner of section 13, T1N (Dee Quadrangle);

(28) Goes 2 miles west along the section line to the southwest corner of section 14, T1N, R9E (Dee Quadrangle);

(29) Continues 1 mile straight north along the section line to the northwest corner of section 14, T1N, R9E (Dee Quadrangle);

(30) Goes 1 mile east along the section line to the northeast corner of section 14, T1N, R9E (Dee Quadrangle);

(31) Continues 2 miles straight north along the section line until its intersection with the T1N–T2N line, R9E (Dee Quadrangle);

(32) Goes 1 mile straight east along the T1N–T2N line to the southeast corner of section 36, R9E (Dee Quadrangle);

(33) Continues 6.75 miles straight north along the R9E–R10E line, crossing onto the Mt. Defiance map, to the Washington-Oregon State line in the Columbia River, T3N (Mt. Defiance Quadrangle);

(34) Goes 1 mile straight east-northeast along the State line, crossing onto the Hood River map, to its

intersection with a southward extension of the R9E–R10E line, T3N (Hood River Quadrangle); and

(35) Continues 0.6 mile north along the R9E–R10E extension, returning to the point of beginning at its intersection with the Washington State Highway 14, close to Tunnel 4, on the north bank of the Columbia River (Hood River Quadrangle).

Dated: March 26, 2004.

Arthur J. Libertucci,

Administrator.

Approved: April 20, 2004.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 04–10513 Filed 5–7–04; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI119–01a; FRL–7657–6]

Approval and Promulgation of Implementation Plans: Wisconsin: Kewaunee County Ozone Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the plan prepared by Wisconsin to maintain the one-hour national ambient air quality standard (NAAQS) for ozone in the Kewaunee County maintenance area through the year 2012. Wisconsin's submitted the revision on January 28, 2003, and supplemented it on February 5, 2003 and February 27, 2003. This revision is required by the Clean Air Act. The effect of this approval is to ensure federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved State Implementation Plan (SIP).

DATES: This "direct final" rule is effective July 9, 2004, unless EPA receives written adverse comment by June 9, 2004. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.WI119 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312)886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Criteria Pollutants Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. WI119. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Criteria Pollutants Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. General Information

A. Does This Action Apply to Me?

This action applies to the citizens, industries, and transportation agencies in Kewaunee County, Wisconsin.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

(a) Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

(b) Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

(c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

(d) Describe any assumptions and provide any technical information and/or data that you used.

(e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

II. What Is a SIP?

The Clean Air Act (CAA) at section 110 requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive and contain state regulations or other enforceable documents, as well as supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

III. What Is the Federal Approval Process for a SIP?

For state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body. Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the federal action on the state submission. If adverse comments are received, they must be addressed prior to any final federal action. All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR, but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

IV. What Are the Criteria for Approval of a Maintenance Plan?

The requirements for the approval and revision of a maintenance plan are found in section 175A of the CAA. A maintenance plan must provide a demonstration of continued attainment including the control measures relied upon, provide contingency measures for the prompt correction of any violation of the standard, provide for continued operation of the ambient air quality monitoring network, provide a means of tracking the progress of the plan, and include the attainment emissions inventory and new budgets for motor vehicle emissions.

V. What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the federally-approved SIP is primarily a state responsibility. However, after the regulation is federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

VI. What Is in the State's Plan To Maintain the Standard?

For the past ten years, Wisconsin has had a plan in place to maintain the one-hour ozone standard in the maintenance area through 2002. The CAA requires that the maintenance plan be revised to provide for maintenance for ten years after the expiration of the initial maintenance period. Wisconsin's submittal of January 28, 2003, which Wisconsin supplemented on February 5, 2003 and February 27, 2003, contained a revised plan that describes what will be done during the next ten-year period to maintain the ozone standard in the Kewaunee County maintenance area through 2012. The following analysis will look at the elements necessary for approval of a maintenance plan and determine if they have been fulfilled.

1. Demonstration of Continued Attainment

This revised plan relies on an attainment level of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to maintain the ozone standard through a combination of control measures. These measures include stationary, area and mobile source controls. The annual emissions from the entire area for 1999, a period when no excursions or violations of the standard occurred, and the project emissions for 2012, the last year of the maintenance plan, are shown in tables 1 and 2 below.

TABLE 1.—KEWAUNEE COUNTY VOC EMISSIONS

[Tons/day]

Source category	1999	2012
Point	0.6	0.7
Area	1.2	1.3
On-Road Mobile	0.9	0.4
Non-Road Mobile	0.8	0.5
Totals	3.5	3.0

TABLE 2.—KEWAUNEE COUNTY NO_X EMISSIONS

[Tons/day]

Source category	1999	2012
Point	0.0	0.0
Area	0.2	0.2
On-Road Mobile	1.3	0.6
Non-Road Mobile	0.6	0.6
Totals	2.1	1.5

Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

As can be seen, total emissions decreased during the ten-year maintenance period. Thus the plan has demonstrated that the one-hour ozone standard will be maintained. The full emissions benefits obtained from state and federal control measures are included in the tables above. For the demonstration of maintenance, it is only necessary for the state to show that there is no increase in the emissions. Clearly

excess emission benefits are included in the demonstration. Control measures used to reduce emissions and maintain the standard are shown in the following list. These measures include stationary, mobile and area source controls.

The state has quantified emission reductions from the following permanent and enforceable measures: Federal Motor Vehicle Control Program; 1992 gasoline Reid vapor pressure change; federal architectural, industrial and maintenance coatings rule; federal consumer and commercial products rule; autobody refinishing rule; Stage II vapor recovery; traffic markings rule; gasoline station tank breathing rule; federal non-road engine standards; wood furniture coating rule; miscellaneous wood products coating rule; industrial adhesives rule; lithographic printing rule; and, plastic parts coating rule.

2. Contingency Measures

Despite the best efforts to demonstrate continued compliance with the NAAQS, the ambient ozone concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the CAA, Wisconsin has provided contingency measures to promptly correct a future ozone air quality problem. For the years 2003 through 2007, Wisconsin has identified the following contingency measures: the NO_X SIP Call (upwind reductions in Illinois and Indiana); federal non-road engine standards; BP Amoco Agreed Order (Indiana); Wisconsin rule NR 428 NO_X reductions; Tier 2 vehicle standards and low sulfur fuel; heavy duty diesel standards and low sulfur diesel fuel; and volatile organic liquid storage (Indiana). These measures are adopted and will be implemented over this time period. From 2008 through 2013, a violation of the standard will trigger the following: Within 6 months Wisconsin will complete an analysis to determine appropriate VOC and/or NO_X control levels and locations to address the cause of the violation, including recommended control measures; Wisconsin will adopt selected contingent maintenance measures within 18 months; and the state commits to as short an implementation time-frame as would be appropriate based on the type of control adopted. Implementation schedules specific to each control measure are set forth in the state's submission. Potential contingency measures contained in the plan for this time period include the following: Reinstatement of requirements for offsets and/or Lowest Achievable Emissions Reductions; application of Reasonable Achievable Control Technology (RACT) to smaller existing sources; tightening of RACT for existing sources; expanded geographic coverage of current point source measures; additional NO_X controls; transportation control measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements; high-enhanced I/M On-Board Diagnostic; California Engine Standards; California Architectural Industrial Maintenance rule; California Commercial and Consumer Products rules; broader geographic applicability of existing area source measures; and, California Off-road Engine Standards.

3. Ambient Air Quality Monitoring

Wisconsin currently operates one ozone monitor in Kewaunee County. Wisconsin has committed to continue operating and maintaining an approved ozone monitor network through the maintenance period and beyond.

4. Tracking the Progress of the Plan

Continued attainment of the ozone NAAQS in Kewaunee County depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. The tracking plan for Kewaunee County primarily consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. WDNR maintains a comprehensive ambient air quality monitoring network and air quality reporting program, including ozone monitoring sites throughout the state and a fully enhanced network in the area around Lake Michigan. These are structured in the state statute to continue through and past the maintenance period. The state will also evaluate future VOC and NO_X emissions inventories for increases over 1999 levels. Triggers include a violation of the one-hour ozone NAAQS; monitored ambient levels of ozone exceeding 0.124 ppm more than once per year at any one monitoring station; and levels exceeding 0.124 more than twice over a three-year period at any one monitoring station.

5. Emission Inventory and Motor Vehicle Emissions Budgets

Wisconsin prepared an emissions inventory for the Kewaunee County maintenance area for the base year of 1999. The year 1999 year was selected for the inventory as no excursion nor violations of the standard occurred. Emissions were then projected for 2007 and 2012. The MOBILE6 emissions model was used for on-road mobile sources. These revised inventories were developed using the latest planning assumptions, including updated vehicle registration data from 1999 through 2001, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures. The emission inventory amounts are shown in the tables below.

TABLE 3.—KEWAUNEE COUNTY VOC EMISSIONS

[Tons/day]

Source category	1999	2007	2012
Point	0.6	0.7	0.7
Area	1.2	1.3	1.3
On-Road Mobile	0.9	0.6	0.4
Non-Road Mobile	0.8	0.6	0.5
Totals	3.5	3.2	3.0

TABLE 4.—KEWAUNEE COUNTY NO_X EMISSIONS

[Tons/day]

Source category	1999	2007	2012
Point	0.0	0.0	0.0
Area	0.2	0.2	0.2
On-Road Mobile	1.3	1.0	0.6
Non-Road Mobile	0.6	0.6	0.6
Totals	2.1	1.8	1.5

Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

Wisconsin has submitted a complete and accurate emissions inventory of VOC and NO_X for the Kewaunee County maintenance area and we are approving the emissions inventory. Based upon the updated emissions inventory, the revised maintenance plan contains new budgets (or limits) for motor vehicle emissions resulting from transportation plans for the Kewaunee County maintenance area. We have reviewed the budgets and have found that the budgets meet all of the adequacy criteria in section 93.118 of the transportation conformity rule. These criteria include: (1) The SIP was endorsed by the Governor (or his designee) and was subject to a state public hearing; (2) consultation among federal, state, and local agencies occurred; (3) the emissions budget is clearly identified and precisely quantified; (4) the motor vehicle emissions budget, when considered together with all other emissions, is consistent with attainment; and (5) the motor vehicle emissions budget is consistent with and clearly related to the emissions inventory and control strategy in the

SIP. We are also required to consider comments submitted to the state at the public hearing. No comments were received by the state on the transportation conformity budgets. The new area-wide budgets are shown in the table below:

TABLE 5.—KEWAUNEE MOBILE VEHICLE EMISSIONS BUDGETS

[Tons/day]

Year	VOC	NO_X
2007	0.61	0.97
2012	0.41	0.63

These new budgets are to be used in all subsequent conformity determinations concerning transportation plans in the Kewaunee County maintenance area. We believe that the motor vehicle emissions budgets are consistent with the control measures identified in this maintenance plan and that this plan demonstrates maintenance with the one-hour ozone standard.

VII. Has Wisconsin Held a Public Hearing?

The Wisconsin submittal was subject to a 30 day public comment period. Wisconsin held a public hearing on November 22, 2002.

VIII. What Action Is EPA Taking?

We are approving: Wisconsin's revision of the maintenance plan for the Kewaunee County maintenance and the transportation conformity budgets for VOC and NO_X.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 9, 2004 without further notice unless we receive relevant adverse written comments by June 9, 2004. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 9, 2004.

IX. What Are the Statutory and Executive Order Review Requirements?

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because this action does not significantly affect energy supply, distribution or use, it is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 26, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

■ 2. Section 52.2585 is amended by adding paragraph (t) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(t) Approval—On January 28, 2003, Wisconsin submitted a request to update the ozone maintenance plan for Kewaunee County. Additional information was submitted on February 5, 2003 and February 27, 2003. As part of the request, the state submitted a maintenance plan as required by section 175A of the Clean Air Act, as amended in 1990. Elements of the section 175 maintenance plan include a contingency plan and Motor Vehicle Emissions Budgets (MVEB) for 2007 and 2012. The following table outlines the MVEB for transportation conformity purposes for the Kewaunee ozone maintenance area.

KEWAUNEE MOBILE VEHICLE EMISSIONS BUDGETS

[Tons/day]

Year	VOC	NO_x
2007	0.61	0.97
2012	0.41	0.63

[FR Doc. 04–10341 Filed 5–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. SD–001–0017a; FRL–7652–3]

Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; Revisions to the Administrative Rules of South Dakota and New Source Performance Standards Delegation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and NSPS delegation.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on September 12, 2003. The September 12, 2003 submittal revises the Administrative Rules of South Dakota, Air Pollution Control Program, by modifying the chapters pertaining to definitions, operating permits for minor sources, new source review and performance testing. In addition, the State made revisions to the Prevention of Significant Deterioration program, which has been delegated to the State. The intended effect of this action is to make these revisions federally enforceable. We are also announcing that on October 31, 2003, we updated the delegation of authority for the implementation and enforcement of the New Source Performance Standards to the State of South Dakota. These actions are being taken under sections 110 and 111 of the Clean Air Act.

DATES: This rule is effective on July 9, 2004 without further notice, unless EPA receives adverse comment by June 9, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, 999 18th Street, Suite 300, Mailcode 8P–AR, Denver, Colorado 80202, (303) 312–6144, e-mail *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under [SD–001–0017]. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the Incorporation by Reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

2. *Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Copies of the State documents relevant to this action are also available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on, Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper,

will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking [SD–001–0017]" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments to *long.richard@epa.gov* and *dygowski.laurel@epa.gov* and include the text "Public comment on proposed rulemaking [SD–001–0017]" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through "Regulations.gov" (see below), EPA's e-mail system will automatically capture your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE," and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Please include the text "Public comment on proposed rulemaking [SD–001–0017]" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the For Further Information Contact section.

II. Summary of SIP Revisions

On September 12, 2003, the State of South Dakota submitted revisions to its SIP. The specific revisions to the SIP contained in the September 12, 2003 submittal are explained below.

A. Administrative Rules of South Dakota (ARSD) 74:36:01—Definitions

ARSD 74:36:01 was revised to correct a typographical error in the definition for "volatile organic compound." ARSD 74:36:01 was also revised to include the definitions for two acronyms, SO_2 (sulfur dioxide) and NO_2 (nitrogen dioxide), that are used in other chapters and not defined.

B. ARSD 74:36:04—Operating Permits for Minor Sources

ARSD 74:36:04:06 was revised to clarify the number of days it takes to receive a new minor source air quality permit. Under 74:36:04:10, the State has up to 90 days to decide on a recommendation for a permit once a complete application has been submitted. After the State decides on its recommendation, the recommendation has to be published in the local newspaper to allow the public 30 days to comment on it. The State has revised ARSD 74:36:04:06 to clarify that it could take up to 120 days for a new source to get a permit once a complete application has been submitted, but the State has not added additional time in the review process.

The State has also revised ARSD 74:36:04 to provide clarification on general permits. Under South Dakota Law 34A–1–56, the State may issue a general permit for categories of air pollution sources that are similar in operation, have similar air pollution limits, and have similar reporting and record keeping requirements. The State has added two sections to ARSD

74:36:04 to specify who may obtain a general permit and also clarify that the Secretary has the authority to require a business that is eligible for a general permit to apply for and obtain a general permit.

C. ARSD 74:36:10—New Source Review (NSR)

In order to maintain their NSR program, the State has made revisions to this chapter to make it equivalent to EPA's regulations. On December 31, 2002, EPA finalized revisions to the NSR program, which became effective on March 3, 2003 (*see* 67 FR 80186), including revisions to baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limitations, clean units, and pollution control projects. The State has revised ARSD 74:36:10 to incorporate these changes and make their NSR program equivalent to EPA regulations.

D. ARSD 74:36:11—Performance Testing

On June 30, 2000, the State submitted revisions to ARSD 74:36:11:01. On January 27, 2003, we proposed to approve the revisions to ARSD 74:36:11:01, except for the second sentence of this section, which we determined contained a director's discretion provision (*see* 68 FR 3848). On April 7, 2003, we issued a final rule concerning the January 27, 2003 proposed rule (68 FR 16728) and inadvertently did not include the disapproval of the second sentence of ARSD 74:36:11:01, as was stated in the proposed rule. In its subsequent September 12, 2003 submittal, the State has removed the director's discretion provision from ARSD 74:36:11:01 and we are approving this revision into their SIP.

III. Revisions to Delegated Programs

A. ARSD 74:36:07—New Source Performance Standards (NSPS)

The September 12, 2003 submittal by the State updated the effective date of the incorporated by reference NSPS to July 1, 2002. EPA is announcing that on October 31, 2003, we updated the delegation of authority for the implementation and enforcement of the NSPS to the State. The October 31, 2003 letter of delegation to the State follows:

Steven M. Pirner, Secretary, South Dakota Department of Environment and Natural Resources, 523 East Capitol, Pierre, SD 57501–3182.

Dear Mr. Pirner: On September 12, 2003, the State submitted a revision to the Air Pollution Control Program for South Dakota. Specifically, the State revised its rules to incorporate the July 1, 2002 Code of Federal Regulations. This revision, in effect, updates the citation of the incorporated Federal New Source Performance Standards (NSPS) to July 1, 2002.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of Montana and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of South Dakota. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of South Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of South Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are NSPS subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, QQ, RR, VV, XX, AAA, JJJ, NNN, OOO, RRR, SSS, UUU and WWW in 40 CFR Part 60 as in effect on July 1, 2002.

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of South Dakota.

(C) The Department of Environment and Natural Resources (DENR) and EPA will continue a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the DENR. If the DENR determines that such enforcement is not feasible and so notifies EPA, or where the DENR acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of South Dakota subject to NSPS.

(E) The State of South Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should DENR grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the DENR shall also constitute grounds for revocation of delegation by EPA.

(F) If at anytime there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DENR.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of South Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's request of September 12, 2003.

(I) Upon approval of the Regional Administrator of EPA Region VIII, the Secretary of DENR may subdelegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of South Dakota must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region VIII. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR 60.5 and 60.6 shall be consistent with those which have already been made by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region VIII and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region VIII office, but rather to the DENR.

(Q) As 40 CFR Part 60 is updated, South Dakota should revise its regulations

accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving South Dakota's request for NSPS delegation for all areas within the State except for land within formal Indian reservations located within or abutting the State of South Dakota, including the: Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation, any land held in trust by the United States for an Indian tribe; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of South Dakota will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312–6005.

Sincerely yours,

Robert E. Roberts,
Regional Administrator.

Enclosures

cc: Brian Gustafson, Administrator, South Dakota Air Quality Program.

Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through July 1, 2002, to the State of South Dakota.

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da	60.45a.
Db	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc	60.48c(a)(4).
Ec	60.56c(i), 60.8.
J	60.105(a)(13)(iii) and 60.106(i)(12).
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O	60.153(e).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3) and 60.335(a).
VV	60.482–1(c)(2) and 60.484.
WW	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX	60.502(e)(6).
AAA	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB	60.543(c)(2)(ii)(B).
DDD	60.562–2(c).
GGG	60.592(c).
III	60.613(e).
JJJ	60.623.
KKK	60.634.
NNN	60.663(f).
QQQ	60.694.
RRR	60.703(e).
SSS	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW	60.754(a)(5).

B. ARSD 74:36:09—Prevention of Significant Deterioration (PSD)

On July 6,1994, EPA delegated the authority to South Dakota to implement and enforce the Federal PSD permitting regulations (*see* 59 FR 47260). In order to maintain their delegation for the implementation and enforcement of the PSD program, the State has made revisions to ARSD 74:36:09 to make it equivalent to EPA's regulations. On December 31, 2002, EPA finalized revisions to the PSD portion of the NSR program, which became effective on March 3, 2003 (*see* 67 FR 80186), including revisions to baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limitations, clean units, and pollution control projects. The State made revisions to 74:36:09 to incorporate these changes and make it equivalent to EPA regulations. The delegation of the PSD program to the State still carries the same terms of delegation as outlined in the 1994 **Federal Register** notice (59 FR 47260). In delegating the PSD program to the State, the State agrees to follow EPA's interpretations of the regulations, as articulated in regulatory preambles, guidance, and other Agency statements.

IV. Final Action

EPA is approving revisions to the South Dakota SIP submitted by the State on September 12, 2003. The revisions we are approving are revisions to ARSD 74:36:01, 74:36:04, 74:36:10, and 74:36:11. We are also announcing that on October 31, 2003, we updated the delegation of authority for the implementation and enforcement of the NSPS to the State of South Dakota.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The South Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because of the following: (1) The revisions to the SIP meet Federal requirements and allow the State to include the most recent version of Federal regulations; and (2) the NSPS delegation meets the requirements of section 111(c) of the CAA and 40 CFR

part 60. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 9, 2004 without further notice unless the Agency receives adverse comments by June 9, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 7, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ—South Dakota

■ 2. Section 52.2170 is amended by adding paragraph (c)(23) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(23) On September 12, 2003, the designee of the Governor of South Dakota submitted revisions to the State Implementation Plan. The September 12, 2003 submittal revises the following chapters of the Administrative Rules of South Dakota: 74:36:01, 74:36:04, 74:36:10 and 74:36:11.

(i) Incorporation by reference.

(A) Administrative Rules of South Dakota, Chapter 74:36:01, sections 74:36:01:01(77), 74:36:01:01(80), and 74:36:01:01(81); Chapter 74:36:04, sections 74:36:04:06, 74:36:04:32 and 74:36:04:33; Chapter 74:36:10, except section 74:36:10:01; and Chapter 74:36:11, section 74:36:11:01, effective September 1, 2003.

[FR Doc. 04–10339 Filed 5–7–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1030, MM Docket No. 02–29, RM–10372]

Digital Television Broadcast Service; Bowling Green, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, dismisses a petition for rule making filed by Bowling Green State University, requesting the substitution of DTV channel *20 for station WBGU–TV's assigned DTV channel *36 at Bowling Green, Ohio. *See* 67 FR 8926, February 27, 2002. Bowling Green State University filed a request for withdrawal of its petition for rule making. With this action, this proceeding is terminated.

DATES: Effective May 10, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–29, adopted April 15, 2004, and released April 23, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–10573 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1057, MM Docket No. 03–320, RM–10816]

Digital Television Broadcast Service; Bloomington, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tribune Broadcasting Holding, Inc., substitutes DTV channel 48 for DTV channel 53 at Bloomington. *See* 68 FR 64579, November 14, 2003. DTV channel 48 can be allotted to Bloomington, Indiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 39–24–27 N. and 86–08–52 W. with a power of 840, HAAT of 357 meters and with a DTV service population of 1815 thousand. Since the community of Bloomington is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 03–230, adopted April 20, 2004, and released April 26, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Indiana, is amended by removing DTV channel 53 and adding DTV channel 48 at Bloomington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–10580 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–977, MB Docket No. 04–11, RM–10841]

Digital Television Broadcast Service; Colby, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Smoky Hills Public Television Corporation, allots DTV channel *19 for noncommercial educational use at Colby, Kansas. *See* 69 FR 6238 (2004). DTV channel *19 can be allotted to Colby, Kansas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 39–23–45 N. and 101–03–37 W. With this action, this proceeding is terminated.

DATES: Effective June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–11, adopted April 8, 2004, and released April 16, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Kansas, is amended by adding DTV channel *19 at Colby.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–10574 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–972; MB Docket No. 04–12; RM–10834]

Radio Broadcasting Services; Littleville and Russellville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 278A from Russellville, Alabama, to Littleville, Alabama, and modifies the license for Station WMXV to specify operation Channel 278A at Littleville, Alabama, in response to a petition filed by Clear Channel Broadcasting Licenses, Inc. See 69 FR 6239, February 10, 2004. The coordinates for Channel 278A at Littleville are 34–35–44 and 87–40–47. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 04–12, adopted April 12, 2004, and released April 14, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Natek, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893. In MM Docket No. 01–62, Station WKGL was ordered to specify operation on Channel 278A in lieu of Channel 249A at Russellville, Alabama, to which the FM Table of Allotments was not amended to reflect this change. *See Ardmore, AL et al.*, 17 FCC Rcd 16332. Thereafter, Station WKGL was granted a license (BMLH–20030415ACF), which implemented this change.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Littleville, Channel 278A and by removing Russellville, Channel 249A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10575 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1028; MB Docket No. 03–196; RM–10626]

Radio Broadcasting Services; Mt. Vernon and Okawville, IL; St. Louis, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking*, 68 FR 56811 (October 2, 2003), this document grants a petition for rulemaking filed by Benjamin Stratemeyer, licensee of Station WIBV(FM), Mount Vernon, Illinois, seeking to amend the FM Table of Allotments by reallotting Channel 271B1 from Mount Vernon to Okawville, Illinois, as the community's first local aural transmission service, and modifying the license of Station WIBV(FM) to reflect the change of community. To accommodate the proposal consistent with the minimum distance separation requirements of the Commission's rules, this document also grants the reclassification of Station KEZK–FM, St. Louis, Missouri, to specify operation on Channel 273C0 in lieu of Channel 273C. No response was filed to the *Order to Show Cause* issued to Infinity Radio Subsidiary Operations, Inc., licensee of Station KEZK(FM). Channel 271B1 is allotted to Okawville in compliance with the Commission's minimum distance separation requirements with a site restriction of19.0 kilometers (11.8 miles) southeast of the community.[1] Coordinates for Channel 271B1 at Okawville are 38–21–56 NL and 89–21–2 WL.

DATES: Effective June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–196, adopted April 14, 2004, and released April 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois is amended by removing Channel 271B1 at Mount Vernon and adding Okawville, Channel 271B1.

■ 3. Section 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 273C and adding Channel 273C0 at St. Louis.

[1] Coordinates for Channel 271B1 at Okawville are 38–21–56 NL and 89–21–2 WL.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10579 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–965; MB Docket No. 03–162, RM–10723]

Radio Broadcasting Services; Linden and Marion, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Beckham Palmer, III, as Receiver, reallots Channel 275C2 from Linden to Marion, Alabama, and modifies Station WNPT–FM's license accordingly. *See* 68 FR 43703, July 24, 2003. Channel 275C2 can be reallotted to Marion in compliance with the Commission's minimum distance separation requirement with a site restriction of 9 kilometers (5.6 miles) northwest at petitioner's requested site. The coordinates for Channel 275C2 at Marion are 32–41–00 North Latitude and 87–23–39 West Longitude.

DATES: Effective June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–162, adopted April 12, 2004, and released April 14, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 275C2 at Linden; and by adding Marion, Channel 275C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10577 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1024; MB Docket No. 02–349; RM–10600]

Radio Broadcasting Services; Encinal, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Katherine Pyeatt, allots Channel 286A at Encinal, Texas, as the community's third local FM service. Channel 286A can be allotted to Encinal, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 km (3.9 miles) north of Encinal. The coordinates for Channel 286A at Encinal, Texas, are 28–05–37 North Latitude and 99–20–25 West Longitude. The Mexican government has concurred in this allotment. A filing window for Channel 286A at Encinal, TX, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–152, adopted April 14, 2004, and released April 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 286A at Encinal.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10582 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1025; MB Docket No. 03–246; RM–10830]

Radio Broadcasting Services; Ambrose and Ocilla, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of RTG Radio, LLC, licensee of FM Station WKAA, Channel 249A, Ocilla, Georgia, deletes Ocilla, Georgia, Channel 249A, from the FM Table of Allotments, allots Channel 250A at Ambrose, Georgia, as the community's first local FM service, and modifies the

license of FM Station WKAA to specify operation on Channel 250A at Ambrose. Channel 250A can be allotted to Ambrose, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 km (8.3 miles) southeast of Ambrose. The coordinates for Channel 250A at Ambrose, Georgia, are 31–30–36 North Latitude and 82–54–48 West Longitude.

DATES: Effective June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–246, adopted April 14, 2004, and released April 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Ambrose, Channel 250A and by removing Channel 249A at Ocilla.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10581 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–966]

Radio Broadcasting Services; Shorter, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Auburn Network, Inc. directed at a letter action in this proceeding, which dismissed the Petition for Rulemaking requesting the allotment of Channel 228A at Shorter, Alabama because it was unacceptable for consideration. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, adopted April 12, 2004, and released April 14, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. This document is not subject to the Congressional Review Act.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1770

RIN 0572–AB77

Accounting Requirements for RUS Telecommunications Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, proposes to amend its regulations on accounting policies and procedures for RUS Telecommunications Borrowers as set forth in RUS's regulations concerning Accounting System Requirements for RUS Telecommunications Borrowers. This proposed rule would adopt some recent accounting changes made by the Federal Communications Commission (FCC). These changes include increasing the expense limit for some assets excluding personal computers, allowing tools and test equipment located in the central office to be expensed under the new limitation. This proposed rule affirms the use of Class A accounts by RUS borrowers; maintains the expense matrix requirements; maintains the requirement that borrowers request prior approval to record extraordinary items, prior period adjustments, and contingent liabilities; establishes policies and procedures to permit RUS borrowers to follow Prudent Utility Practice regarding the storage and retention of business records; and eliminates certain Telecommunications Plant Under Construction accounts. This proposed rule also adds three new accounting interpretations on Allowance for Funds Used During Construction, Reporting Comprehensive Income, and Disclosures about Pensions and Other Postretirement Benefits.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than July 9, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Agency Web site: *http://www.usda.gov/rus/index2/Comments.htm*. Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov*. Include in the subject line of the message "Accounting Requirements for Telecommunications Borrowers."
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Development Utility Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Development Utility Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading "Accounting Requirements for Telecommunications Borrowers". All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Diana C. Alger, Chief, Technical Accounting and Auditing Staff, Program Accounting Services Division, Rural Utilities Service, Stop 1523, Room 2221–South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720–5227.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

This rule implements provisions of the loan documents between RUS and those telecommunications utilities that borrow from RUS and represents an update of existing record retention requirements. The requirements reflect due diligence standards of both pubic and private lenders for borrowers in the telecommunications industry. Moreover, the requirements reflect generally accepted telecommunications industry standards and are consistent with requirements imposed by many State and Federal utility regulatory bodies. The rule is not expected to materially change the current practices of most RUS borrowers and consequently will not have a significant impact on the affected entities.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0003 that would require approval under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice titled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Program under No. 10.851, Rural Telephone Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans; No. 10.857, Rural Broadband Access Loans and Loan Guarantees; and No. 10.854, Distance Learning and Telemedicine Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) (2 U.S.C. 1501 *et seq.*) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Background

In order to facilitate the effective and economic operation of a business, adequate and reliable financial records must be maintained. Accounting records must provide a clear, accurate picture of current economic conditions from which management can make informed decisions in charting the company's future. The rate regulated environment in which a telecommunications carrier operates causes an even greater need for financial information that is accurate, complete, and comparable with that generated by other carriers. For this reason, the Federal Communications Commission (FCC) prescribes a Uniform System of Accounts (USoA) for the telecommunications industry.

RUS, as a Federal lender and mortgagee, and in furthering the objectives of the Rural Electrification Act (RE Act) (7 U.S.C. 901 *et seq.*) has a legitimate programmatic interest and a substantial financial interest in requiring adequate records to be maintained. In order to provide RUS with financial information that can be analyzed and compared with the operations of other borrowers in the RUS program, all RUS borrowers must maintain financial records that utilize uniform accounts and uniform accounting policies and procedures. The standard RUS security instrument, therefore, requires borrowers to maintain their books, records, and accounts in accordance with methods and principles of accounting prescribed by RUS in the RUS USoA for its telecommunications borrowers.

The RUS USoA parallels the USoA prescribed by the FCC for telecommunications utilities and, as such, is consistent with the standards of financial accounting in the telecommunications industry as a whole. As FCC amends its USoA, RUS reviews the appropriateness and applicability of each amendment and proposes revisions, as necessary, to the RUS USoA.

In Docket 95–60, published in the **Federal Register** on July 23, 1997, at 62 FR 39451, the FCC raised the expense limit on accounts 2112, 2113, 2114, 2115, 2116, 2122, 2123, and 2124 (excluding personal computers) from $500 to $2000. RUS proposes to adopt this change.

The FCC published Docket 98–81 in the **Federal Register** on September 15, 1999, at 64 FR 50002. This order entailed a number of items that RUS proposes to incorporate into its USoA.

RUS proposes combining accounts 2114 through 2116 into a single new account 2114, Tools and Other Work Equipment. Because the assets recorded in these accounts are similar in nature and use similar depreciation rates, we believe that combining them would not adversely impact loan security issues or the consistent and comparable reporting of financial information to RUS. Nor would it affect reporting for ratemaking purposes.

RUS proposes to eliminate account 5010 and to require that all nonregulated revenues be recorded in account 5280, Nonregulated Operating Revenue. This rule requires carriers to maintain subsidiary record categories for each nonregulated revenue item recorded in this account. Our interest is in ensuring that nonregulated revenues be segregated from regulated revenues. This proposed change would achieve that goal.

Docket 98–81 also eliminated the requirement in 47 CFR 32.16 for filing projected future effects of an accounting change (revenue requirement study) and the requirement in 47 CFR 32.2000(b) that borrowers submit for approval, journal entries to record telecommunications plant acquisitions of more than $1 million Class A companies and more than $250,000 for Class B companies. Because the need for this level of approval no longer exists, RUS proposes to eliminate these requirements.

The FCC published Docket 99–253 in the **Federal Register** on March 28, 2000, at 65 FR 16328. This docket eliminated the 30-day notification requirement for establishment of temporary or experimental accounts found in 47 CFR 32.13(a)(3), eliminated the reclassification requirement for property held for more than 2 years in account 2002, Property Held for Future Telecommunications Use, and eliminated the reclassification requirement for projects held in account 2003, Telecommunications Plant under Construction, and suspended for more than 6 months. RUS proposes to adopt these changes.

The FCC has also eliminated the requirement for carriers to obtain prior approval before recording extraordinary items, contingent liabilities, and prior period adjustments as previously required in 47 CFR 32.25. RUS proposes to retain this requirement for borrowers of the RUS Telecommunications Program.

Additionally, this docket eliminated the expense matrix requirement found in 47 CFR 32.5999. The information provided by this matrix is invaluable for RUS in its analysis of the financial condition of borrowers. RUS, therefore, proposes to retain the expense matrix requirement.

Because account 2004 has been eliminated from the FCC USoA, RUS proposes to delete accounts 2004.1, 2004.2, and 2004.3 from the accounts required under 7 CFR 1770.15 and rename and redefine accounts 2003.1, 2003.2, and 2003.4.

In response to a change by the FCC of its revenue threshold for classification of Class A carriers, RUS proposes to require that all borrowers using the Class A system of accounts as of the publication date of this proposed rule be required to continue using this system and all new borrowers adopt the Class A system of accounts. RUS shall continue to require financial information that can be analyzed and compared with the operations of all other borrowers in the RUS program. For this reason, RUS borrowers must continue to maintain financial records that utilize uniform accounts and uniform accounting policies and procedures.

To ensure that borrowers consistently report their financial operations and keep pace with the changing environment in which they operate, RUS is proposing to set forth accounting interpretations that establish the reporting and disclosure requirements for Reporting Comprehensive Income and Disclosures about Pensions and Other Postretirement Benefits.

RUS is proposing to revise 7 CFR part 1770 to change the word "companies" to "borrowers" in all instances to better reflect the current nature of the industry. RUS also proposes to specifically identify the organizational unit within RUS to which requests for approval and interpretations should be addressed. This revision should assist borrowers in filing requests and should expedite the review process within RUS.

On November 5, 2001, the FCC released its' "Report and Order in CC Docket NOS. 00–199, 97–212, and 80–286 Further Notice of Proposed Rulemaking in CC Docket NOS. 00–199, 99–301, and 80–286" addressing: (1) The 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and Automated Reporting Management Information System (ARMIS) Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, (2) Amendments to the Uniform System of Accounts for Interconnection, (3) Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, and (4) Local Competition and Broadband reporting. This order contains a number of items that RUS proposes to incorporate into its USoA.

The FCC created new subaccounts for accounts 2212, 2232, 6212, 6232, and 6620. Account 2212, Digital Electronic Switching, will have subaccounts 2212.1, Circuit, and 2212.2, Packet. Account 2232, Circuit Equipment, will have subaccounts 2232.1, Electronic, and 2232.2, Optical. Account 6212, Digital Electronic Switching Expense, will have subaccounts 6212.1, Circuit, and 6212.2, Packet. Account 6232, Circuit Equipment Expense, will have subaccounts 6232.1, Electronic, and 6232.2, Optical. Account 6620, Services, will have subaccounts 6620.1, Wholesale, and 6620.2, Retail. RUS proposes to adopt these changes.

The FCC revised §§ 32.1220(h) and 32.2311(f) of 47 CFR part 32 and eliminated the annual inventory requirement for materials and supplies, and station apparatus in stock. Borrowers would be allowed the latitude to determine the appropriate inventory validation methodology based on risk assessment and existing controls. RUS proposes to adopt this change.

Additionally, under 7 CFR part 32, § 32.4999(L) the FCC eliminated the "treated traditionally" requirement from incidental activities. Revenues from minor nontariffed activities that are an outgrowth of the borrower's regulated activities may be recorded as regulated revenues under certain conditions. However, the FCC maintained the other three requirements to provide safeguards to prevent misuse of the incidental activities exception. RUS proposes to adopt this change.

The FCC addressed the affiliate transaction rules under § 32.27 in five distinct areas by: (1) Eliminating the requirement that carriers make a fair market value comparison for asset transfers when the total annual value of that asset is less than $500,000; (2) giving carriers flexibility in valuing certain transactions by allowing the higher or lower of cost or market valuation to operate as either a floor or ceiling, depending on the direction of the transaction; (3) lowering the percent of sales of assets or services to third parties, from greater than 50 percent to 25 percent, in order to qualify for prevailing price treatment in valuing affiliate transactions; (4) maintaining the narrowly defined exception that provides when an incumbent carrier purchases services from an affiliate that exists solely to provide services to members of the carrier's corporate family, the carrier may record the services at fully distributed cost rather than applying the cost or market rule; and (5) maintaining the affiliate transaction rules and not exempting nonregulated to nonregulated transactions from the affiliate transaction rules. RUS proposes not to adopt these changes.

The FCC modified § 32.5280(c) so that incumbent local exchange carriers (ILEC's) may group their nonregulated revenues into two groups: One subsidiary record for all the revenues from regulated services treated as nonregulated for federal accounting purposes pursuant to the FCC order, and the second for all other nonregulated revenues. RUS proposes not to adopt these changes.

Additionally, the FCC streamlined many of its accounting rules and reporting requirements by reducing the number of Class A accounts from 296 to 164, and the number of Class B accounts from 113 to 82 accounts. RUS proposes not to adopt this change.

On November 12, 2002, the FCC released an Order that suspended implementation of four accounting and recordkeeping rule modifications they previously adopted: (1) The consolidation of Accounts 6621 through 6623 into Account 6620, with subaccounts for wholesale and retail; (2) the consolidation of Account 5230, Directory Revenue into Account 5200, Miscellaneous Revenue; (3) the consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and Amortization Expense; and (4) the revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43–07. RUS agrees with this suspension.

The suspension will allow the recently established Federal-State Joint Conference on Accounting Issues to review these rules before carriers are required to implement them. However, those reforms included in the FCC's November 5, 2001, Report and Order and Further Notice of Proposed Rulemaking, took effect January 1, 2003.

List of Subjects in 7 CFR Part 1770

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications, Uniform System of Accounts.

For the reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by amending part 1770 to read as follows:

1. The authority citation for part 1770 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

PART 1770—ACCOUNTING REQUIREMENTS FOR RUS TELECOMMUNICATIONS BORROWERS

2. The heading for part 1770 is revised to read as set out above.

3. Subpart A is revised to read as follows:

Subpart A—Preservation of Records

§ 1770.1 General.

(a) This subpart establishes RUS polices and procedures for the preservation of records of telecommunications borrowers.

(b) The regulations prescribed in this part apply to all books of account, contracts, records, memoranda, documents, papers, and correspondence prepared by or on behalf of the borrower as well as those which come into its possession in connection with the acquisition of property by purchase, consolidation, merger, etc.

(c) The regulations prescribed in this part shall not be construed as excusing compliance with any other lawful requirements for the preservation of records.

§ 1770.2 Designation of a supervisory official.

Each borrower shall designate one or more officials to supervise the preservation of its records.

§ 1770.3 Index of records.

(a) Each borrower shall maintain a master index of records. The master index shall identify the records retained, the related retention period, and the locations where the records are maintained. The master index shall be subject to review by RUS and RUS shall reserve the right to add records, or lengthen retention periods upon finding that retention periods may be insufficient for its purposes.

(b) At each office where records are kept or stored the borrower shall arrange, file, and index the records currently at that site so that they may be readily identified and made available to representatives of RUS.

§ 1770.4 Record storage media.

Each RUS borrower has the flexibility to select its own storage media subject to the following conditions:

(a) The storage media must have a life expectancy at least equal to the applicable retention period provided for in the master index of records, unless there is quality transfer from one media to another with no loss of data. Each transfer of data from one media to another must be verified for accuracy and documented.

(b) Each borrower is required to implement internal control procedures that assure the reliability of, and ready access to, data stored on machine-readable media. Internal control procedures must be documented by a responsible supervisory official.

(c) The records shall be indexed and retained in such a manner that they are easily accessible.

(d) The borrower shall have the hardware and software available to locate, identify, and reproduce the records in readable form without loss of clarity.

(e) At the expiration of the retention period, the borrower may use any appropriate method to destroy records.

(f) When any records are lost or destroyed before the expiration of the retention period set forth in the master index, a certified statement shall be added to the master index listing, as far as may be determined, the records lost or destroyed and describing the circumstances of the premature loss or destruction.

§ 1770.5 Periods of retention.

(a) Except as provided for in paragraphs (b), (c), and (d) of this section, record retention shall be consistent with Prudent Utility Practice. Prudent Utility Practice shall mean any of the practices, methods, and acts which, in the exercise of reasonable judgment, in light of the facts, including but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the telecommunications industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost effectiveness, reliability, safety, and expeditiousness. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost effectiveness, reliability, safety, and expedition.

(b) Records supporting construction financed by RUS shall be retained until audited and approved by RUS.

(c) Records related to plant in service must be retained until the facilities are permanently removed from utility service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by RUS or other regulatory body having jurisdiction.

(d) Life and mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired whichever is longer.

§§ 1770.6–1770.9 [Reserved]

Subpart B—Uniform System of Accounts

4–5. Amend § 1770.11 by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 1770.11 Accounting system requirements.

* * * * *

(b) * * *

(1) RUS borrowers maintaining the accounts prescribed in 47 CFR part 32 for Class A companies as of [EFFECTIVE DATE OF FINAL RULE] shall continue to do so. RUS suspends implementation of the reduced number of Class A and B accounts, until the Federal-State Joint Conference has reviewed them.

(2) New borrowers under the RUS telecommunications program shall maintain the accounts prescribed in 47 CFR part 32 for Class A companies.

* * * * *

6. Amend § 1770.13 by revising paragraph (d) to read as follows:

§ 1770.13 Accounting requirements.

* * * * *

(d) Interpretations of RUS accounting requirements shall be referred to the Assistant Administrator, Program Accounting and Regulatory Analysis, Rural Utilities Service.

7. Section 1770.15 is amended by:

A. Removing account entries 2004.1, 2004.2, and 2004.3;

B. Revising account entries 2003.1, 2003.2, and 2003.3, and

C. Adding new subaccount entries 2212, 2232, 6212, 6232, and 6620.

This revision and addition are to read as follows:

§ 1770.15 Supplementary accounts required of all borrowers.

* * * * *

Class of company Account No.		Account title
A	B	
*	*	*
2003.1	2003.1	*Telecommunications Plant Under Construction—Contract* This account shall include all costs incurred in the construction of telecommunications plant performed under contract and the cost of software development projects that are not yet ready for their intended use. Included among these costs are contractor payments and charges for engineering, supervision, taxes, insurance, transportation, and other costs incurred in contract construction. This account shall be maintained such that the various items of cost are readily identifiable.
2003.2	2003.2	*Telecommunications Plant Under Construction—Force Account* This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and the cost of software development projects performed by the borrowers' own employees that are not yet ready for their intended use. Included among these costs are charges for material, labor, engineering, supervision, taxes, insurance, transportation, supply expense, and other costs incurred in the construction. This account shall be maintained such that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.
2003.3	2003.3	*Telecommunications Plant Under Construction—Work Orders* This account shall include all costs incurred in the construction of telecommunication plant performed under a work order system or and line extension contract. This type of construction generally includes service installations, subscriber extensions, and minor plant improvements after the completion of the initial system. Included among these costs are charges for labor, material and supplies, transportation, payroll taxes, insurance, supervision, and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of the individual jobs. These records shall be reconciled periodically with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
*	*	*
2212.1	2212.1	Digital Electronic Switching—Circuit
2212.2	2212.2	Digital Electronic Switching—Packet
*	*	*
2232.1	2232.1	Circuit Equipment—Electrical
2232.2	2232.2	Circuit Equipment—Optical
*	*	*
6212.1	6212.1	Digital Electronic Switching Expense—Circuit
6212.2	6212.2	Digital Electronic Switching Expense—Packet
*	*	*
6232.1	6232.1	Circuit Equipment Expense—Electronic
6232.2	6232.2	Circuit Equipment Expense—Optical
*	*	*
6620.1	6620.1	Services—Wholesale
6620.2	6620.2	Services—Retail
*	*	*

8. Section 1770.17 is added to read as follows:

§ 1770.17 Expense matrix.

The expense accounts shall be maintained by the following subsidiary record categories, as appropriate to each account. Such subsidiary record categories shall be reported as required by 47 CFR part 43.

(a) *Salaries and wages.* This subsidiary record category shall include compensation to employees, such as wages, salaries, commissions, bonuses, incentive awards, and termination payments.

(b) *Benefits.* This subsidiary record category shall include payroll related benefits on behalf of employees such as the following:

(1) Pensions;

(2) Savings plan contributions (company portion);

(3) Worker's compensation required by law;

(4) Life, hospital, medical, dental, and vision plan insurance; and

(5) Social Security and other payroll taxes.

(c) *Rents.* (1) This subsidiary record category shall include amounts paid for the use of real and personal operating property. Amounts paid for real property shall be included in Account 6121, Land and Buildings Expense. This category includes payments for operating leases but does not include payments for capital leases.

(2) This subsidiary record category is applicable only to the Plant Specific Operations Expense accounts. Incidental rents, *e.g.*, short-term rental car expense, shall be categorized as Other Expenses (*see* paragraph (d) of this section) under the account which reflects the function for which the incidental rent was incurred.

(d) *Other expenses.* This subsidiary record category shall include costs which cannot be classified to the other subsidiary record categories. Included are material and supplies, including provisioning (*note also* Account 6512, Provisioning Expense); contracted services; accident and damage payments, insurance premiums; traveling expenses and other miscellaneous costs.

(e) *Clearances.* This subsidiary record category shall include amounts

transferred to Construction accounts (*see* 47 CFR 32.2000(c)(2)(iii)), other Plant Specific Operations Expense accounts and/or Account 3100, Accumulated Depreciation (cost of removal; *see* 47 CFR 32.2000(g)(1)(iii)), as appropriate, from Accounts 6112, Motor Vehicles Expense, 6114, Tools and Other Work Equipment Expense, 6534, Plant Operations and Administration Expense, and 6535, Engineering Expense. There shall also be transfers to Construction or other Plant Specific Operations Expense accounts, as appropriate, from Account 6512, Provisioning Expense. With respect to these expenses, companies may establish such clearing accounts as they deem necessary to accomplish substantially the same results, provided that within thirty (30) days of the opening of such accounts, companies shall notify the FCC of the nature and purpose thereof. Additional clearing accounts affecting other expense areas may be established with prior approval of the FCC. Should companies elect, the initial incurred subsidiary record category identification may be carried through to the final accounts without FCC approval.

9. Section 1770.25 is added to read as follows:

§ 1770.25 Unusual items and contingent liabilities.

Extraordinary items, prior period adjustments and contingent liabilities shall be submitted to RUS for review before being recorded in the company's books of account. The materiality of corrections of errors in prior periods shall be measured in relation to the summary account level used for reporting purposes for Class A companies, or in relation to total operating revenues or total operating expenses for Class B companies. For Class A companies, no correction in excess of one percent of the aggregate summary account dollars or one million dollars, whichever is higher, may be recorded in current operating accounts without prior approval. For Class B companies, no correction which exceeds one percent of total operating revenues or one percent of total operating expenses, depending on the nature of the item, may be recorded in current operating accounts without prior approval.

Subpart C—Accounting Interpretations

10–12. The Appendix to Subpart C is amended by:

A. Adding under "Numerical Index" and "Number and Title", in numerical order, the new numbers and their respective titles;

B. Adding under "Subject Matter Index", in alphabetic order, new subjects and their respective number, and

C. Add at the end of this Appendix, the new numbers and descriptions.

These additions are to read as follows:

APPENDIX TO SUBPART C TO PART 1770—ACCOUNTING METHODS AND PROCEDURES REQUIRED OF ALL BORROWERS

* * * * *

Numerical Index

Number and Title

* * * * *

107 Allowance for Funds Used During Construction

108 Reporting Comprehensive Income

109 Disclosures About Pensions and Other Postretirement Benefits

* * * * *

Subject matter index *Number*

A

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* * * * *

107 *Allowance for Funds Used During Construction*

A. Statement of Financial Accounting Standard No. 34, Capitalization of Interest Cost, established the standards for capitalizing interest cost as a part of the historical cost of acquiring certain assets. In order to capitalize interest, the asset must require a period of time to complete or to get it ready for its intended use. This standard applies to all entities that construct facilities for their own use and should be applied by RUS Telecommunications borrowers as follows:

1. Only actual interest costs incurred on external borrowings qualify to be capitalized. The interest rate used to calculate the amount of interest to be capitalized is based on the companies external borrowings. If a construction project is associated with specific debt, the interest rate on that debt is used to calculate interest cost to be capitalized. If the project is not associated with a specific debt, a weighted average of the rates of all existing debt shall be applied to expenditures for the project. There is no materiality threshold for adoption of this standard (47 CFR 32.26).

2. If a borrower is involved in a joint construction project, all determinations as to the amount of interest incurred and qualified for capitalization must be based on individual financing arrangements with regard to the Interest During Construction rules.

3. The capitalization period shall end when the asset is substantially complete and ready for its intended use.

Disclosures

A. The following information with respect to interest cost shall be disclosed in the financial statements or related notes:

1. For an accounting period in which no interest cost is capitalized, the amount of interest cost incurred and charged to expense during the period.

2. For an accounting period in which some interest cost is capitalized, the total amount of interest cost incurred during the period and the amount thereof that has been capitalized.

108 *Reporting Comprehensive Income*

A. In June 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income. This statement requires that all items that meet the definition of the components of comprehensive income be reported in the financial statements for the period in which they are recognized. Statement 130 establishes a distinction between *comprehensive income* and *other comprehensive income*.

1. *Comprehensive income* is composed of net income and other comprehensive income. The net income is the result of operations resulting from the aggregation of revenues, expenses, gains and losses that are not items that comprise other comprehensive income.

2. *Other comprehensive income* is composed of the following:

(a) Foreign currency items,

(b) Minimum pension liability adjustments, and

(c) Unrealized gains and losses on certain investments in debt and equity securities.

Gains or losses on investment securities included in the net income of the current period that also had been included in other comprehensive income as unrealized holding gains or losses in a prior period must be adjusted (called reclassification adjustments) in the presentation of other comprehensive income in the current period.

B. *Comprehensive income* expressed as a formula would be:

Net Income ± items of *other comprehensive income* = *comprehensive income*.

While Statement 130 requires that comprehensive income should be divided into two broad display classifications, net income and other comprehensive income, it does not prescribe a specific format for displaying comprehensive income in the financial statements.

C. RUS telecommunications borrowers that present a single Statement of Operations and Patronage Capital should present the components of *other comprehensive income*

below the total for net income and then present the reconciliation of patronage capital (Retained Earnings). Borrowers that present a separate Statement of Patronage Capital (or Retained Earnings) should display the beginning balance of patronage capital (or retained earnings), net income for the period, other items of comprehensive income and total comprehensive income before the presentation of other items of patronage capital (or retained earnings) for the period.

109 *Disclosures About Pensions and Other Postretirement Benefits*

A. Statement of Financial Accounting Standards (SFAS) No. 132, Employers' Disclosures about Pensions and Other Postretirement Benefits, issued in February 1998, is effective for fiscal years beginning after December 15, 1998. This statement revises employers' disclosure requirements for pension and other postretirement benefit plans. It does not change the measurement or recognition of those plans. The statement also permits reduced disclosures for nonpublic entities, which are defined as any entity other than one:

1. Whose debt or equity securities trade in a public market either on a domestic or foreign stock exchange or in the over-the-counter market, including securities quoted only locally or regionally,

2. That makes a filing with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market, or

3. That is controlled by an entity covered by 1 or 2 above.

Public Entities and Those Controlled by Public Entities

A. A commercial RUS Telecommunications borrower that meets the definition of a public entity and sponsors one or more defined benefit pension or postretirement benefit plan shall provide the following information on a comparative basis for the statements presented:

1. A reconciliation of beginning and ending balances of the benefit obligation showing separately, if applicable, the effects during the period attributable to each of the following:

(a) Service cost,
(b) Interest cost,
(c) Contributions by plan participants,
(d) Actuarial gains and losses,
(e) Foreign currency exchange rate changes,
(f) Benefits paid,
(g) Plan amendments,
(h) Business combinations,
(i) Divestitures,
(j) Curtailments,
(k) Settlements, and
(l) Special termination benefits.

2. A reconciliation of beginning and ending balances of the fair value of plan assets showing separately, if applicable, the effects during the period attributable to each of the following:

(a) Actual return on plan assets,
(b) Foreign currency exchange rate changes,
(c) Contributions by the employer,
(d) Contributions by plan participants,
(e) Benefits paid,
(f) Business combinations,
(g) Divestitures, and
(h) Settlements.

3. The funded status of the plans, the amounts not recognized in the statement of financial position, and the amounts recognized in the statement of financial position, including:

(a) The amount of any unamortized prior service cost.

(b) The amount of any unrecognized net gain or loss (including asset gains and losses not yet reflected in market-related value).

(c) The amount of any remaining unamortized, unrecognized net obligation or net asset existing at the initial date of application of SFAS No. 87, Employers' Accounting for Pensions, or SFAS No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions.

(d) The net pension or other postretirement benefit prepaid assets or accrued liabilities.

(e) Any intangible asset and the amount of accumulated other comprehensive income recognized pursuant to paragraph 37 of SFAS No. 87, as amended.

4. The amount of net periodic benefit cost recognized, showing separately:

(a) The service cost component,
(b) The interest cost component,
(c) The expected return on plan assets for the period,
(d) The amortization of the unrecognized transition obligation or transition asset,
(e) The amount of recognized gains and losses, the amount of prior service cost recognized, and
(f) The amount of gain or loss recognized due to a settlement or curtailment.

5. The amount included within other comprehensive income for the period arising from a change in the additional minimum pension liability recognized pursuant to paragraph 37 of SFAS No. 87, as amended.

6. On a weighted-average basis, the following assumptions used in the accounting for the plans:

(a) Assumed discount rate,
(b) Rate of compensation increase (for pay-related plans), and
(c) Expected long-term rate of return on plan assets.

7. The assumed health care cost trend rate(s) for the next year used to measure the expected cost of benefits covered by the plan (gross eligible charges) and a general description of the direction and pattern of change in the assumed trend rates thereafter, together with the ultimate trend rate(s) and when that rate is expected to be achieved.

8. The effect of a one-percentage-point increase and the effect of a one-percentage-point decrease in the assumed health care cost trend rates on (for purposes of this disclosure, all other assumptions shall be held constant, and the effects shall be measured based on the substantive plan that is the basis for the accounting):

(a) The aggregate of the service and interest cost components of net periodic postretirement health care benefit cost, and

(b) The accumulated postretirement benefit obligation for health care benefits.

9. If applicable, the amounts and types of securities of the employer and related parties included in plan assets, the approximate amount of future annual benefits of plan participants covered by insurance contracts issued by the employer or related parties, and any significant transactions between the employer or related parties and the plan during the period.

10. If applicable, any alternative amortization method used to amortize prior service amounts or unrecognized net gains and losses pursuant to paragraphs 26 and 33 of SFAS No. 87 or paragraphs 53 and 60 of SFAS No. 106.

11. If applicable, any substantive commitment, such as past practice or a history of regular benefit increases, used as the basis for accounting for the benefit obligation.

12. If applicable, the cost of providing special or contractual termination benefits recognized during the period and a description of the nature of the event.

13. An explanation of any significant change in the benefit obligation or plan assets not otherwise apparent in the other disclosures.

B. RUS Telecommunications borrowers that sponsor two or more pension or postretirement plans may aggregate the required disclosures. If the disclosures are aggregated, the aggregate benefit obligation and aggregate fair value of plan assets for plans with benefit obligations in excess of plan assets must be disclosed.

C. RUS Telecommunications borrowers sponsoring defined contribution plans shall disclose the amount of cost recognized for defined contribution pension or other postretirement benefit plans during the period separately from the amount of cost recognized for defined benefit plans. The disclosures shall include a description of the nature and effect of any significant changes during the period affecting comparability, such as a change in the rate of employer contributions, a business combination, or a divestiture.

Nonpublic Entities

A. RUS commercial and cooperative type borrowers that meet the definition of a nonpublic entity, as previously defined, may elect to meet the following reduced disclosure requirements:

1. The benefit obligation.
2. Fair value of plan assets.
3. Funded status of the plan.
4. Employer contributions.
5. Participant contributions.
6. Benefits paid.

7. The amounts recognized in the statement of financial position, including the net pension and other postretirement benefit prepaid assets or accrued liabilities and any intangible asset and the amount of accumulated other comprehensive income recognized pursuant to paragraph 37 of SFAS No. 87, as amended.

8. The amount of net periodic benefit cost recognized and the amount included within other comprehensive income arising from a change in the minimum pension liability recognized pursuant to paragraph 37 of SFAS No. 87, as amended.

9. On a weighted-average basis, the following assumptions used in the accounting for the plans: assumed discount

rate, rate of compensation increase (for pay-related plans), and expected long-term rate of return on plan assets.

10. The assumed health care cost trend rate(s) for the next year used to measure the expected cost of benefits covered by the plan (gross eligible charges) and a general description of the direction and pattern of change in the assumed trend rates thereafter, together with the ultimate trend rate(s) and when that rate is expected to be achieved.

11. If applicable, the amounts and types of securities of the employer and related parties included in plan assets, the approximate amount of future annual benefits of plan participants covered by insurance contracts issued by the employer or related parties, and any significant transactions between the employer or related parties and the plan during the period.

12. The nature and effect of significant nonroutine events, such as amendments, combinations, divestitures, curtailments, and settlements.

B. The majority of RUS Telecommunications borrowers will fall within the definition of nonpublic entities with exception of those held by publicly traded holding companies.

Multiemployer Plans

A. An RUS Telecommunications borrower shall disclose the amount of contributions to multiemployer plans during the period. The borrower may disclose total contributions to multiemployer plans without disaggregating the amounts attributable to pensions and other postretirement benefits. The disclosures shall include a description of the nature and effect of any changes affecting comparability, such as a change in the rate of employer contributions, a business combination, or a divestiture.

B. In some cases, withdrawal from a multiemployer plan results in an obligation to the plan for a portion of the plan's unfunded accumulated postretirement benefit obligation. If it is either probable or reasonably possible that (a) an employer would withdraw from the plan under circumstances that would give rise to an obligation or (b) an employer's contribution to the fund would be increased during the remainder of the contract period to make up a shortfall in the funds necessary to maintain the negotiated level of benefit coverage, the employer shall apply the provisions of SFAS No. 5, Accounting for Contingencies.

Disclosure Matrix

	Public entities	*Nonpublic entities*
Change in benefit obligation:		
Benefit obligation beginning of year	X	
Service Cost	X	
Interest Cost	X	
Actuarial Gain	X	
Plan Amendments	X	
Benefits Paid	X	
Benefit obligation at end of year	X	X
Change in plan assets:		
Fair value of plan assets beginning of year	X	
Actual return on plan assets	X	
Employer Contribution	X	X
Contributions by plan participants	X	X
Benefits Paid	X	X
Fair value of plan assets at end of year	X	X
Funded status:		
Unrecognized net actuarial loss(gain)	X	X
Unamortized prior service cost	X	X
Unrecognized transition obligation	X	X
Prepaid (Accrued) benefit cost	X	X
Weighted-average assumptions as of December 31:		
Discount rate	X	X
Expected return on plan assets	X	X
Rate of compensation increase	X	X
Components of net periodic benefit cost:		
Service cost	X	
Interest cost	X	
Expected return on plan assets	X	
Amortization of prior service cost	X	X
Amortization of transition obligation	X	X
Recognized net actuarial loss	X	X
Net periodic benefit cost	X	X

Dated: April 23, 2004.

Hilda G. Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–10512 Filed 5–7–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 754

[Docket No. 040504140–4140–01]

Notice of Public Hearing on the Receipt by the Department of Commerce of a Written Petition Requesting the Imposition of Short Supply Export Controls and Monitoring on Recyclable Metallic Materials Containing Copper

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of public hearing.

SUMMARY: On April 7, 2004, the Bureau of Industry and Security (BIS) received a written petition requesting the imposition of monitoring and export controls on copper scrap and copper-alloy scrap; the petitioner also requested a public hearing on the issue. This notice advises the public of the date, time, and location of the hearing, and establishes the procedures to be followed to request participation as a speaker, or to attend the hearing.

DATES: The public hearing will be held on May 19, 2004, in the auditorium of the Herbert C. Hoover Building, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, from 10 a.m. to 5 p.m. At the Department's discretion, the public hearing may continue on May 20, 2004.

ADDRESSES: Requests to participate as a speaker at the hearing may be mailed to the Regulatory Policy Division, Attention: Copper Short Supply Petition, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044, or sent by facsimile to (202) 482–5650.

FOR FURTHER INFORMATION CONTACT: Daniel O. Hill, Director of the Office of Strategic Industries and Economic Security, Bureau of Industry and Security, who may be reached at (202) 482–4506.

SUPPLEMENTARY INFORMATION: On April 7, 2004, a petition was received by the Department of Commerce from the Copper & Brass Fabricators Council, Inc., and the Non-Ferrous Founders' Society requesting that the Department impose monitoring and controls on exports of recyclable metallic materials containing copper pursuant to the short supply provisions of section 7(c) of the Export Administration Act and section 754.7 of the Export Administration Regulations. The petition also requested that the Department hold a hearing on the subject of the petition.

As described in the April 22, 2004, **Federal Register** notice (69 FR 21815) in which the Department acknowledged receipt of the petition and noted the request for a public hearing, requests to participate as a speaker at the hearing must be received by the Department by May 13, 2004. The request should contain a telephone number where the presenter can be reached before the hearing. All requests should describe the presenter's interest in the proceeding, explain why that person is an appropriate representative of a group or class of persons that has such an interest, and enclose a concise summary of the proposed oral presentation. Potential presenters are advised to review the April 22, 2004, **Federal Register** notice that describes the areas of interest and the information sought by the Department from the interested public. Please note that the submission of a request to speak, and the accompanying written summary, is separate from any written comments provided in response to the April 22, 2004, **Federal Register** notice.

The Department will seek to provide an opportunity for a full range of perspectives regarding the petition. In the interest of fulfilling this objective, the Department reserves the right to select the presenters on the basis of their written requests to speak, and the written summaries of their proposed remarks. Should time constraints preclude including all of those requesting to be heard, priority consideration will be given to those presenters whose written request to speak, and accompanying statement summary, most comprehensively address the issues raised by the petitioner, and the areas of interest and information sought by the Department in its April 22, 2004, **Federal Register** notice. The Department also reserves the right to schedule the order of the presentations and to establish additional procedures governing the conduct of the hearing. The Department will designate the Hearing Officer and identify additional federal government representatives who will serve on a panel at the hearing.

The Department will notify each person selected to be heard no later than 5 p.m. on May 17, 2004. Persons selected to be heard should bring 25 copies of their statement to the hearing. The length of each presentation will be limited to ten minutes, with a subsequent period for questions from the members of the hearing panel. Members of the public or presenters who attend the hearing will not be permitted to question any other presenters or members of the panel.

Please be advised that the requests to participate at the hearing, the summaries of proposed remarks, and a transcript of the hearing will be made a matter of public record, and available for review on the BIS Web site at *http://www.bis.doc.gov*. If interested parties cannot access the BIS Web site, they are encouraged to use the contact information noted above for assistance.

The general public is invited to attend the hearing, and is advised that compliance with security procedures is required before entering the Department, so attendees should time their arrival accordingly.

Dated: May 5, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–10546 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140492–02]

RIN 1545–BD04

Definition of Solid Waste Disposal Facilities for Tax-exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 9, 2004. Outlines of topics to be discussed at the public hearing scheduled for August 11,

2004, at 10 a.m., must be received by August 4, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–140492–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–140492–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs,* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS—REG–140492–02). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael P. Brewer, (202) 622–3980; concerning submissions and the hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Generally, interest on a State or local bond is excluded from gross income under section 103 of the Internal Revenue Code (Code). However, section 103(b) provides that the exclusion does not apply to a private activity bond unless the bond is a qualified bond. Section 141(e) defines *qualified bond* to include an exempt facility bond that meets certain requirements. Section 142(a) lists the categories of exempt facility bonds, which include bonds for solid waste disposal facilities under section 142(a)(6).

Section 1.103–8(f)(2)(ii)(*a*) of the Income Tax Regulations generally defines *solid waste disposal facilities* as any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste. Section 1.103–8(f)(2)(ii)(*b*) provides that the term *solid waste* has the same meaning as in former section 203(4) of the Solid Waste Disposal Act (42 U.S.C. 3252(4)), as quoted in § 1.103–8(f)(2)(ii)(*b*), except that material will not qualify as solid waste unless, on the date of issue of the obligations issued to provide the facility to dispose of the waste material, it is property that is useless, unused, unwanted, or discarded solid material that has no market or other value at the place where the property is located (the *no-value test*). Thus, under the existing regulations, when any person is willing to purchase the property, at any price, the material is not waste. However, if any person is willing to remove the property at his own expense but is not willing to purchase it at any price, the material is waste under the existing regulations.

Former section 203(4) of the Solid Waste Disposal Act, as quoted in § 1.103–8(f)(2)(ii)(*b*), provides that the term *solid waste* means,

> garbage, refuse, and other discarded solid materials, including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

Section 1.103–8(f)(2)(ii)(*c*) states that a facility that disposes of solid waste by reconstituting, converting, or otherwise recycling it into material that is not waste also qualifies as a solid waste disposal facility if solid waste constitutes at least 65 percent, by weight or volume, of the total materials introduced into the recycling process. Such a recycling facility does not fail to qualify as a solid waste disposal facility under the existing regulations solely because it operates at a profit.

Section 17.1(a) of the temporary Income Tax Regulations generally provides that, in the case of property that has both a solid waste disposal function and a function other than the disposal of solid waste, only the portion of the cost of the property allocable to the function of solid waste disposal is taken into account as an expenditure to provide solid waste disposal facilities. However, under § 17.1(a), a facility that otherwise qualifies as a solid waste disposal facility will not be treated as having a function other than solid waste disposal merely because material or heat that has utility or value is recovered or results from the disposal process. Section 17.1(a) provides that, when materials or heat are recovered, the waste disposal function includes the processing of those materials or heat that occurs in order to put them into the form in which the materials or heat are in fact sold or used, but does not include further processing that converts the materials or heat into other products.

Section 17.1(b) provides that the portion of the cost of property allocable to solid waste disposal is determined by allocating the cost of the property between the property's solid waste disposal function and any other functions by any method which, with reference to all the facts and circumstances with respect to the property, reasonably reflects a separation of costs for each function of the property.

In Notice 2002–51 (2002–2 C.B. 131) the IRS and Treasury Department requested public comments on the application of section 142(a)(6) to recycling facilities. Notice 2002–51 also invited comments on any other issues concerning the application of that Code provision.

In response to the Notice, commentators suggested that the rules governing exempt facility bonds for solid waste disposal facilities should be consistent with national policies to encourage, facilitate, and increase recycling. For example, commentators stated that the rules should not deny tax-exempt financing to recycling while providing such financing to landfills and municipal waste incinerators.

Commentators suggested revisions to the no-value test used for determining whether material is solid waste. For example, commentators suggested that material that has a market or other value at the place it is located only by reason of its value for recycling should not be considered to have a market or other value. Commentators also suggested that material acquired by a recycler should qualify as solid waste if the amounts paid to the packer, collector or similar party are not in excess of the cost of transporting and handling the material. Some commentators suggested that the determination of whether material is waste should be made at the point of generation prior to the time costs are incurred to divert the material from the waste stream.

Commentators also suggested that the determination of when the waste recycling process stops should not depend on whether the activity is being carried out by a single party or multiple parties, or whether there has been a change of ownership of the material.

The IRS and Treasury Department have considered these comments, and the proposed regulations contained in this document (the proposed regulations) implement a number of these recommendations.

Explanation of Provisions

I. Solid Waste

The proposed regulations contain proposed amendments to 26 CFR part 1 regarding exempt facility bonds for solid waste disposal facilities. In light of the changes that have occurred in the waste recycling industry since the existing regulations were issued in 1972, the proposed regulations eliminate the no-

value test for determining whether material is solid waste. The proposed regulations retain the definition of solid waste under former section 203(4) of the Solid Waste Disposal Act, quoted above, and provide guidance for determining whether material constitutes "garbage, refuse and other discarded solid materials" under that definition.

Thus, the proposed regulations provide that the term *solid waste* means garbage, refuse, and other discarded solid materials, including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

For these purposes, the proposed regulations provide that *garbage, refuse and other discarded solid materials* means material that is solid and that is introduced into a final disposal process, conversion process, recovery process, or transformation process (as those terms are defined in the proposed regulations and described in part II below) unless the material falls within one of several categories of excluded items.

The first category of material that does not constitute solid waste is material that is introduced into a conversion process if the material is either: (1) A fossil fuel; or (2) any material that is grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy. For this purpose, material is not treated as grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy just because an operation is performed on the material to make the material more conducive to being converted to heat, hot water, or steam. For example, if material that is not otherwise grown, harvested, produced, mined, or created for the principal purpose of converting the material to a useful form of energy is formed into pellets to make the material more conducive to being incinerated to produce steam, the creation of pellets does not cause the material to be produced or created for the principal purpose of converting the material to steam.

The second category of material that does not constitute solid waste is any precious metal that is introduced into a recovery process.

The regulations are reserved with respect to any additional category of excluded material that may be specified with respect to a transformation process.

Under the proposed regulations, hazardous material is not solid waste if the material is disposed of at a facility that is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on October 22, 1986, the date of the enactment of the Tax Reform Act of 1986). Thus, under the proposed regulations, a hazardous waste disposal facility described in section 142(h)(1) would not qualify as a solid waste disposal facility.

Finally, the proposed regulations provide that radioactive material is not solid waste.

II. Solid Waste Disposal Facility

A. In General

The proposed regulations provide that a facility is a *solid waste disposal facility* to the extent that the facility is: (1) Used to perform a solid waste disposal function (as defined in the proposed regulations and discussed in part II, B below); (2) used to perform a preliminary function (as defined in the proposed regulations and discussed in part II, C below); or (3) functionally related and subordinate (within the meaning of § 1.103–8(a)(3)) to a facility that is used to perform a solid waste disposal function or a preliminary function.

B. Solid Waste Disposal Function

The proposed regulations define *solid waste disposal function* as the processing of solid waste in (1) a final disposal process, (2) a conversion process, (3) a recovery process, or (4) a transformation process.

1. Final Disposal Process

Under the proposed regulations, a *final disposal process* is (1) the placement of material in a landfill or (2) the incineration of material without any useful energy being captured. Comments are requested on whether other types of processes should be included in the definition of final disposal process.

2. Conversion Process

The proposed regulations define *conversion process* as a process in which material is incinerated and heat, hot water, or steam is created and captured as useful energy. For this purpose, the conversion process begins with the incineration of material and ends at the point at which the latest of heat, hot water, or steam is created. Thus, the conversion process ends before any transfer or distribution of heat, hot water or steam. Comments are requested on the definition of conversion process in the proposed regulations, including whether the definition should include processes in which useful energy in a form other than heat, hot water, or steam is created.

3. Recovery Process

The proposed regulations define *recovery process* as a process that starts with the melting or re-pulping of material to return the material to a form in which the material previously existed for use in the fabrication of an end product and ends immediately before the material is processed in the same or substantially the same way that virgin material is processed to fabricate the end product.

The proposed regulations further provide that, if an end product is fabricated entirely from non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same way that virgin material is processed in a comparable fabrication process that uses only virgin material or a combination of virgin and non-virgin material.

The proposed regulations also specify that refurbishing, repair, or similar activities are not recovery processes.

Comments are requested on the definition of recovery process in the proposed regulations, including whether the definition should include processes, other than melting or re-pulping, that return material to a form in which the material previously existed.

4. Transformation Process

The IRS and Treasury Department recognize that certain processes in which material is transformed for use in the creation of a useful product (*transformation processes*) should be treated as solid waste disposal functions. A transformation process could include, for example, shredding used tires for use as roadbed material. However, defining a transformation process requires clear criteria that distinguish a transformation process from a manufacturing or production process that uses material other than solid waste. The proposed regulations reserve on the definition of transformation process so that the public may comment on how the definition should be crafted to meet this objective within the context of the proposed regulations. Comments are requested in particular on whether the

definition of a transformation process should be limited to the processing of particular types of materials to produce certain categories of products, and, if so, what types of materials and which categories of products should be included.

C. Preliminary Function

A facility is a solid waste disposal facility under the proposed regulations to the extent that the facility is used to perform a preliminary function. For this purpose, a *preliminary function* is the collection, separation, sorting, storage, treatment, processing, disassembly, or handling of solid material that is preliminary and directly related to a solid waste disposal function. However, no portion of a collection, separation, sorting, storage, treatment, processing, disassembly, or handling activity is a preliminary function unless, for each year while the issue is outstanding, more than 50 percent, by weight or volume, of the total materials that result from the entire activity (both the part that is preliminary and directly related to a solid waste disposal function and the part that is not preliminary and directly related to a solid waste disposal function) is solid waste. For example, if a facility sorts material and some of the sorted material is processed in a solid waste disposal function and some of the sorted material is processed in another manner, a portion of the sorting facility is a solid waste disposal facility if, for each year while the issue is outstanding, more than 50 percent, by weight or volume, of all the sorted material is solid waste.

D. Mixed-Function Facilities

The proposed regulations provide that, in general, if a facility is used to perform both (1) a solid waste disposal function or a preliminary function, and (2) another function, then the costs of the facility allocable to the solid waste disposal function or the preliminary function are determined using any reasonable method, based on all the facts and circumstances. This rule applies, for example, if a facility is used (1) to process solid waste in a recovery process and (2) to perform another function that is neither a solid waste disposal function (because it does not process solid waste in a final disposal process, conversion process, recovery process, or transformation process) nor a preliminary function (because it is not preliminary and directly related to a solid waste disposal function).

The proposed regulations also contain a special rule to determine the portion of the costs of property that are allocable to a solid waste disposal function if the property is used to perform a final disposal process, conversion process, recovery process, or transformation process and the inputs to the process consist of solid waste and material that is not solid waste. Under this special rule, the portion of the costs of property used to perform such a process that are allocable to a solid waste disposal function equals the lowest percentage of solid waste processed in the process in any year while the issue is outstanding. The percentage of solid waste processed in such a process for any year is the percentage, by weight or volume, of the total materials processed in the process that constitute solid waste for that year. If, however, for each year while the issue is outstanding, solid waste constitutes at least 80 percent, by weight or volume, of the total materials processed in the process, all of the costs of the property used to perform the process are allocable to a solid waste disposal function.

Proposed Effective Date

The proposed regulations will apply to bonds that are: (1) Sold on or after the date that is 60 days after the date of publication of final regulations under section 142(a)(6) in the **Federal Register**; and (2) subject to section 142. However, the proposed regulations provide that an issuer is not required to apply the regulations to bonds described in the preceding sentence that are issued to refund a bond to which the regulations do not apply if the weighted average maturity of the refunding bonds is not longer than the weighted average maturity of the refunded bonds. Section 1.103–8(f)(2) of the Income Tax Regulations and § 17.1 of the temporary Income Tax Regulations will not apply to bonds that are subject to the final regulations under section 142(a)(6).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 11, 2004, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by August 9, 2004 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by August 4, 2004.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Comments are requested on all aspects of the proposed regulations, including those aspects for which specific requests for comments are set forth above.

Drafting Information

The principal authors of these regulations are Michael P. Brewer, Timothy L. Jones and Rebecca L. Harrigal, Office of Chief Counsel, IRS (TE/GE). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.142(a)(6)–1 is added to read as follows:

§ 1.142(a)(6)–1 Exempt facility bonds: solid waste disposal facilities.

(a) *In general.* Section 103(a) provides that, generally, interest on a state or local bond is not included in gross income. However, this exclusion does not apply to any private activity bond that is not a qualified bond. Section 141(e) defines *qualified bond* to include an exempt facility bond that meets certain requirements. Section 142(a) defines *exempt facility bond* as any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility specified in section 142(a). One type of facility specified in section 142(a) is a solid waste disposal facility. This section defines the term solid waste disposal facility for purposes of section 142(a).

(b) *Solid waste disposal facility*—(1) *In general.* The term *solid waste disposal facility* means a facility to the extent that the facility is—

(i) Used to perform a solid waste disposal function (within the meaning of paragraph (b)(2) of this section);

(ii) Used to perform a preliminary function (within the meaning of paragraph (b)(3) of this section); or

(iii) Functionally related and subordinate (within the meaning of § 1.103–8(a)(3)) to a facility that is used to perform a solid waste disposal function or a preliminary function.

(2) *Solid waste disposal function.* A solid waste disposal function is the processing of solid waste (as defined in paragraph (c) of this section) in—

(i) A final disposal process (as defined in paragraph (d) of this section);

(ii) A conversion process (as defined in paragraph (e) of this section);

(iii) A recovery process (as defined in paragraph (f) of this section); or

(iv) A transformation process (as defined in paragraph (g) of this section).

(3) *Preliminary function.* A preliminary function is the collection, separation, sorting, storage, treatment, processing, disassembly, or handling of solid material that is preliminary and directly related to a solid waste disposal function. However, no portion of a collection, separation, sorting, storage, treatment, processing, disassembly, or handling activity is a preliminary function unless, for each year while the issue is outstanding, more than 50 percent, by weight or volume, of the total materials that result from the entire activity is solid waste.

(4) *Mixed-function facilities.* Paragraph (h) of this section provides rules for determining the portion of a facility that is a solid waste disposal facility for a facility that is used to perform—

(i) A solid waste disposal function or a preliminary function; and

(ii) Another function.

(c) *Solid Waste*—(1) *In general.* For purposes of this section, the term *solid waste* means garbage, refuse, and other discarded solid materials (as defined in paragraph (c)(2) of this section), including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants. Liquid or gaseous waste is not solid waste.

(2) *Garbage, refuse and other discarded solid materials*—(i) *In general.* For purposes of paragraph (c)(1) of this section, *garbage, refuse and other discarded solid materials* means material that is solid and that is introduced into a final disposal process, conversion process, recovery process, or transformation process unless the material is described in paragraph (c)(2)(ii), (iii), (iv), (v) or (vi) of this section.

(ii) *Certain material introduced into a conversion process.* Material is described in this paragraph (c)(2)(ii) if the material is introduced into a conversion process and the material is—

(A) A fossil fuel; or

(B) Any material that is grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy. For example, organic material that is closed-loop biomass under section 45(c) is described in this paragraph (c)(2)(ii) if the material is introduced into a conversion process. Material is not treated as described in this paragraph (c)(2)(ii) just because an operation is performed on the material to make the material more conducive to being converted to heat, hot water, or steam. For example, if material that is not otherwise grown, harvested, produced, mined, or created for the principal purpose of converting the material to a useful form of energy is formed into pellets to make the material more conducive to being incinerated to produce steam, the creation of pellets does not cause the material to be produced or created for the principal purpose of converting the material to steam.

(iii) *Certain material introduced into a recovery process.* Material is described in this paragraph (c)(2)(iii) if the material is introduced into a recovery process, and the material is a precious metal.

(iv) *Certain material introduced into a transformation process.* [Reserved].

(v) *Certain hazardous material.* Material is described in this paragraph (c)(2)(v) if the material is hazardous material and it is disposed of at a facility that is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on October 22, 1986, the date of the enactment of the Tax Reform Act of 1986). See section 142(h)(1).

(vi) *Radioactive material.* Material is described in this paragraph (c)(2)(vi) if the material is radioactive.

(d) *Final disposal process.* The term *final disposal process* means—

(1) The placement of material in a landfill; or

(2) The incineration of material without any useful energy being captured.

(e) *Conversion process.* The term *conversion process* means a process in which material is incinerated and heat, hot water, or steam is created and captured as useful energy. The conversion process begins with the incineration of material and ends at the point at which the latest of heat, hot water, or steam is created. Thus, the conversion process ends before any transfer or distribution of heat, hot water or steam.

(f) *Recovery process*—(1) *In general.* The term *recovery process* means a process that starts with the melting or re-pulping of material to return the material to a form in which the material previously existed for use in the fabrication of an end product and ends immediately before the material is processed in the same or substantially the same way that virgin material is processed to fabricate the end product. For example, melting non-virgin metal to fabricate a metal product is not a recovery process if virgin metal is melted in the same or substantially the same process to fabricate the product.

(2) *End products fabricated entirely from non-virgin material.* If an end product is fabricated entirely from non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same way that virgin

material is processed in a comparable fabrication process that uses only virgin material or a combination of virgin and non-virgin material. For example, if new paper is fabricated entirely from re-pulped, non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same manner that virgin material is processed in the fabrication of paper made only with virgin material, or with a mixture of virgin and non-virgin material.

(3) *Refurbishing, repair, or similar activities.* Refurbishing, repair, or similar activities are not recovery processes.

(g) *Transformation process.* [Reserved].

(h) *Mixed-function facilities*—(1) *In general.* Except to the extent provided in paragraph (h)(2) of this section, if a facility is used to perform both a solid waste disposal function or a preliminary function and another function, then the costs of the facility allocable to the solid waste disposal function or the preliminary function are determined using any reasonable method, based on all the facts and circumstances. See § 1.103–8(a)(1) for rules relating to which amounts are used to provide an exempt facility.

(2) *Mixed inputs*—(i) *In general.* Except as provided in paragraph (h)(2)(ii) of this section, for each final disposal process, conversion process, recovery process, or transformation process, the percentage of costs of the property used to perform such process that are allocable to a solid waste disposal function equals the lowest percentage of solid waste processed in that process in any year while the issue is outstanding. The percentage of solid waste processed in such process for any year is the percentage, by weight or volume, of the total materials processed in that process that constitute solid waste for that year.

(ii) *Special rule for mixed-input processes if at least 80 percent of the materials processed are solid waste.* For each final disposal process, conversion process, recovery process, or transformation process, all of the costs of the property used to perform such process are allocable to a solid waste disposal function if, for each year while the issue is outstanding, solid waste constitutes at least 80 percent, by weight or volume, of the total materials processed in the process.

(i) *Examples.* The following examples illustrate the application of this section:

Example 1. Final disposal process. Garbage trucks collect solid material at curbside from businesses and residences and dump the material in a landfill owned by Company A. The landfill is not subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986). The placement of material in the landfill is a final disposal process. The solid material placed in the landfill is solid waste under paragraph (c) of this section. Therefore, the landfill is a solid waste disposal facility.

Example 2. Recovery process. Company B re-pulps magazines and cleans the pulp. After cleaning, B mixes the pulp with virgin material and uses the mixed material to produce rolls of paper towels. Before the mixing, the re-pulped material is not processed in the same or substantially the same way that virgin material is processed to produce the paper towels. The process starting with the re-pulping of the magazines and ending immediately before the re-pulped material is mixed with the virgin material is a recovery process. The magazines introduced into the recovery process are solid waste. Therefore, the property that re-pulps the magazines and the property that cleans the re-pulped material are used to perform a solid waste disposal function.

Example 3. Preliminary function. Company C owns a paper mill. At the mill, logs from nearby timber operations are processed through a machine that removes bark. The stripped logs are used to manufacture paper. The stripped bark falls onto a conveyor belt that transports the bark to a storage bin used to briefly store the bark until C feeds the bark into a boiler. The conveyor belt and storage bin are used only for these purposes. The boiler is used only to create steam by burning the bark, and the steam is used to generate electricity. The creation of steam from the stripped bark is a conversion process that starts with the incineration of the stripped bark. The conversion process is a solid waste disposal function. The conveyor belt performs a collection activity that is preliminary and that is directly related to the solid waste disposal function. The storage bin performs a storage function that is preliminary and that is directly related to the solid waste disposal function. Thus, the conveyor belt and storage bin are solid waste disposal facilities. The removal of the bark does not have a sufficient nexus to the conversion process to be directly related to the conversion process; the process of removing the bark does not become directly related to the conversion process merely because it results in material that will be waste used in the conversion process.

Example 4. Mixed-input facility. Company D owns an incinerator financed by an issue and uses the incinerator exclusively to burn coal (a fossil fuel) and other solid material to create steam that is used to generate electricity. Each year while the issue is outstanding, 30 percent by volume and 40 percent by weight of the solid material that D processes in the conversion process is a fossil fuel. The remainder of the solid material processed is neither a fossil fuel nor material that was grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy. Seventy percent of the costs of the property used to perform the conversion process are allocable to a solid waste disposal function.

Example 5. Mixed-function facility. Company E owns and operates a facility financed by an issue and uses the facility exclusively to sort damaged bottles from bottles that may be re-filled. The damaged bottles are directly introduced into a process that melts them for use in the fabrication of an end product. The melting process is a recovery process. Each year while the issue is outstanding, more than 50 percent, by weight or volume, of all of the bottles that pass out of the sorting process are damaged bottles that are processed in a recovery process. The sorting facility performs a preliminary function, but it also performs another function. The costs of the sorting facility allocable to the preliminary function are determined using any reasonable method, based on all the facts and circumstances.

(j) *Effective date*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this section applies to bonds that are—

(i) Sold on or after the date that is 60 days after the date of publication of final regulations in the **Federal Register**; and

(ii) Subject to section 142.

(2) *Certain refunding bonds.* An issuer is not required to apply this section to bonds described in paragraph (j)(1) of this section that are issued to refund a bond to which this section does not apply if the weighted average maturity of the refunding bonds is not longer than the weighted average maturity of the refunded bonds.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–10500 Filed 5–5–04; 2:45 pm]

BILLING CODE 4930–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB70

Revision of Patent Fees for Fiscal Year 2005

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Proposed rule.

SUMMARY: The United States Patent and Trademark Office (referred to as "we", "us", or "our" in this notice) is proposing to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees

that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

Legislation has been proposed and passed by the House of Representatives that would alter our fee amounts and procedures. The United States Patent and Trademark Fee Modernization Act of 2004 (H.R. 1561) passed the House of Representatives on March 3, 2004. Similar legislation is pending in the Senate as S. 1760. If enacted, this legislation would supersede certain patent fee amounts identified in this proposed rule.

DATES: Comments must be submitted on or before June 9, 2004.

ADDRESSES: You may submit comments, identified by RIN number 0651-AB70, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: Tamara.McClure@uspto.gov*. Include RIN number 0651–AB70 in the subject line of the message.
- *Fax:* (703) 308–5077, marked to the attention of Tamara McClure.
- *Mail:* Mail Stop 16, Director of the U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450, marked to the attention of Tamara McClure.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rule making. For additional information on the rule making process, see the heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tamara McClure by e-mail at *Tamara.McClure@uspto.gov*, by telephone at (703) 308–5075, or by fax at (703) 308–5077.

SUPPLEMENTARY INFORMATION: This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106–113). This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

Legislation has been proposed and passed by the House of Representatives that would alter our fee amounts and procedures. The United States Patent and Trademark Fee Modernization Act of 2004 (H.R. 1561) passed the House of Representatives on March 3, 2004. Similar legislation is pending in the Senate as S. 1760. Customers should be aware that legislative changes to our fees would supersede certain patent fees in this proposed rule. If such legislative changes occur, we will need to make corresponding changes to the rules of practice to conform them to the fees as set forth in such legislation. Customers may wish to refer to our official Web site at *http://www.uspto.gov* for the most current fee amounts.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted on October 1, 2004, to reflect fluctuations occurring during the twelve-month period from October 1, 2003, through September 30, 2004, in the Consumer Price Index for All Urban Consumers (CPI–U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI–U for the twelve-month period ending September 30, 2004, which is 1.1 percent. Based on this projected CPI–U, patent statutory fees are proposed to be adjusted by 1.1 percent. Before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI–U published by the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) are proposed to be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of $100 or more were rounded to the nearest $10. Fees of less than $100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National application filing fees

Section 1.16, paragraphs (a), (g) and (h), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent application and reexamination processing fees

Section 1.17, paragraphs (a)(3) through (a)(5), (e), (m), and (r) through (t), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.18 Patent post allowance (including issue) fees

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post issuance fees

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.492 National stage fees

Section 1.492, paragraphs (a)(1) through (a)(3), and (a)(5) if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Other Considerations

This proposed rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

By statute, the USPTO's Director is expressly authorized to adjust fees annually to reflect fluctuations in the CPI. *See* 35 U.S.C. 41(f) (certain fees "may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor").

The proposed rule increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). The fee increases would range from a minimum of $10 to a maximum of $40 under the proposed rule.

Under 35 U.S.C. 41(h)(1) small entities are accorded a fifty-percent reduction in most patent fees. Consequently, the small entity fee increases would range from a minimum of $5 to a maximum of $20 under the proposed rule. The sole exception under this proposed rule package is the fee set forth under 35 CFR 1.17(t), which does not qualify for a small entity fee reduction. The fee increase for 35 CFR 1.17(t) is only $10.

Accordingly, the proposed rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Patents.

For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (g), and (h) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:
- By a small entity (§ 1.27(a)) $390.00
- By other than a small entity $780.00

* * * * *

(g) Basic fee for filing each plant application, except provisional applications:
- By a small entity (§ 1.27(a)) $270.00
- By other than a small entity $540.00

(h) Basic fee for filing each reissue application:
- By a small entity (§ 1.27(a)) $390.00
- By other than a small entity $780.00

* * * * *

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(3) through (a)(5), (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *

(1) * * *

(2) * * *

(3) For reply within third month:
- By a small entity (§ 1.27(a)) $480.00
- By other than a small entity $960.00

(4) For reply within fourth month:
- By a small entity (§ 1.27(a)) $750.00
- By other than a small entity $1,500.00

(5) For reply within fifth month:
- By a small entity (§ 1.27(a)) $1,020.00
- By other than a small entity $2,040.00

* * * * *

(e) To request continued examination pursuant to § 1.114:
- By a small entity (§ 1.27(a)) $390.00
- By other than a small entity $780.00

* * * * *

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):
- By a small entity (§ 1.27(a)) $670.00
- By other than a small entity $1,340.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):
- By a small entity (§ 1.27(a)) $390.00
- By other than a small entity $780.00

(s) For each additional invention requested to be examined under § 1.129(b):
- By a small entity (§ 1.27(a)) $390.00
- By other than a small entity $780.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c):
- (§§ 1.55 and 1.78) $1,340.00

4. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
- By a small entity (§ 1.27(a)) $670.00
- By other than a small entity $1,340.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a))	$245.00
By other than a small entity	$490.00
(c) Issue fee for issuing a plant patent:	
By a small entity (§ 1.27(a))	$325.00
By other than a small entity	$650.00

* * * * *

5. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:	
By a small entity (§ 1.27(a))	$460.00
By other than a small entity	$920.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:	
By a small entity (§ 1.27(a))	$1,055.00
By other than a small entity	$2,110.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:	
By a small entity (§ 1.27(a))	$1,630.00
By other than a small entity	$3,260.00

* * * * *

6. Section 1.492 is proposed to be amended by revising paragraphs (a)(1) through (a)(3) and (a)(5) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.27(a))	$370.00
By other than a small entity	$740.00
(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:	
By a small entity (§ 1.27(a))	$390.00
By other than a small entity	$780.00
(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.27(a))	$545.00
By other than a small entity	$1,090.00

* * * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:	
By a small entity (§ 1.27(a))	$465.00
By other than a small entity	$930.00

* * * * *

Dated: May 4, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–10572 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 501

Authorization to Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations that define a postage meter and its components and a manufacturer and/or distributor of postage meters. The proposed rule also puts forth the responsibilities of any authorized person or entity to notify the Postal Service upon a change in ownership or control, or bankruptcy or insolvency, and identifies factors the Postal Service will consider in acting upon requests for changes of approval or ownership or control of an approved manufacturer or distributor.

DATES: Comments must be received on or before July 9, 2004.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: Title 39, Code of Federal Regulations (CFR) Part 501, Authorization to Manufacture and Distribute Postage Meters, expands the definition of a postage meter and its components to include all postage evidencing systems that produce evidence of prepayment of postage by any method other than postage stamps or permit imprints. This part also expands the activities of persons or entities that must be approved by the Postal Service. These changes are required to address the evolution in postage evidencing technology in recent years. The events requiring notification to the Postal Service are hereby expanded to include changes in the financial condition of the authorized party, such as bankruptcy and insolvency as well as a change in ownership or control.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. Amend § 501.1 by replacing the title and all text to read as follows:

§ 501.1 Postage evidencing system/ infrastructure authorization.

a. Postage evidencing systems produce evidence of prepayment of U.S. postage by any method other than postage stamps or permit imprint. They include but are not limited to postage meters and PC Postage® systems.

b. Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or concern without prior, written approval of the Postal Service:

i. Producing or distributing any postage evidencing system that generates U.S. postage.

ii. Repairing, distributing, refurbishing, remanufacturing or destroying any component of a postage evidencing system that accounts for or authorizes the printing of U.S. postage.

iii. Owning or operating an infrastructure that maintains operating data for the production of U.S. postage; maintains data concerning users or use of a postage evidencing systems; or accounts for U.S. postage purchased for distribution through a postage evidencing system.

iv. Owning or operating an infrastructure that maintains operating data or data concerning existing or proposed users of a postage evidencing system that is used to facilitate licensing or registration with the Postal Service of users of a postage evidencing system.

c. Any person or entity seeking authorization to perform any activity described in b must submit a request to the Postal Service in person or in writing.

d. Approval shall be based upon satisfactory evidence of the applicant's integrity and financial responsibility and a determination that disclosure to the applicant of the Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410(c)(2).

e. Qualification and approval may be based upon conditions agreed to by the Postal Service and the applicant. The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

3. Amend § 501.3 by replacing the title and all text to read as follows:

§ 501.3 Changes in ownership or control, bankruptcy, or insolvency.

a. Any person or entity authorized under 501.1 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in its ownership or control including changes in the ownership of an affiliate which exercises control over its postage evidencing system operations in the United States. A change of ownership or control within the meaning of this section includes entry into a strategic alliance or other agreement under which a third party may gain access to Postal Service customer or financial data. Any person or entity seeking to acquire ownership or control of a person or entity authorized under 501.1 must provide the Postal Service satisfactory evidence that it satisfies the conditions for approval stated in 501.1. Early notification of a proposed change in ownership or control will facilitate expeditious review of an application to acquire ownership or control under this section.

b. Any person or entity authorized under 501.1 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in the status of its financial condition either through bankruptcy, insolvency, assignment for the benefit of creditors, or other similar financial action. Any person or entity authorized under 501.1 who experiences a change in the status of its financial condition may, at the discretion of the Postal Service, have its authorization under 501.1 modified or terminated.

Neva Watson,

Attorney, Legislative.

[FR Doc. 04–10497 Filed 5–7–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI119–01b; FRL–7657–7]

Approval and Promulgation of Implementation Plans; Wisconsin: Kewaunee County Ozone Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a plan prepared by Wisconsin to maintain the one-hour national ambient air quality standard (NAAQS) for ozone in the Kewaunee County maintenance area through the year 2012. This revision is required by the Clean Air Act. The effect of this approval is to ensure Federal enforceability of the State air program plan and to maintain consistency between the State-adopted plan and the approved State Implementation Plan (SIP). In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 9, 2004.

Comments may also be submitted electronically or through hand delivery/ courier. Please follow the detailed instructions described in part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutants Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. *bortzer.jay@epa.gov*

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Criteria Pollutants Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

Dated: April 26, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–10342 Filed 5–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. WY–001–0013; FRL–7659–3]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Restructuring and Renumbering of Wyoming Air Quality Standards and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on September 12, 2003. The submitted revisions restructure the Wyoming Air Quality Standards and Regulations (WAQS&R) from a single chapter into thirteen separate chapters and renumber the provisions within each chapter. The submitted revisions contain no substantive changes to the existing SIP-approved regulations. The intended effect of this action is to make federally enforceable the restructured WAQS&R. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before June 9, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No.WY–001–0013, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *mastrangelo.domenico@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.WY–001–0013. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Some information in the docket may not be publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air & Radiation Program, Mailcode 8P–AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6436, *mastrangelo.domenico@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Wyoming* mean the State of Wyoming, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Summary of SIP Revision

A. Background

On August 9, 2000, the State submitted to EPA a SIP revision that restructured and renumbered the entire set of its air regulations from a single chapter into thirteen separate chapters, and modified the content of some of the regulations. On August 7, 2001, the State submitted a SIP revision adopting credible evidence provisions and modifying the definition of volatile organic compounds (VOCs) in the State's air regulations. On August 13, 2001, the State submitted a SIP revision modifying several chapters of its air regulations to correct deficiencies or bring regulations up to date with the Federal regulations. On February 6, 2002 (67 FR 5485) EPA published a Direct Final Rule partially approving and partially disapproving the Wyoming SIP revisions submitted on the dates indicated above.

In the aftermath of this EPA action, EPA received adverse comments from the Wyoming Outdoor Council (on March 7, 2002), and a March 8, 2002 letter from the State of Wyoming requesting the withdrawal of the SIP revisions submitted on August 9, 2000, August 7, 2001 and August 13, 2001. In response, on April 1, 2002 (67 FR 15335) EPA published a notice withdrawing its February 6, 2002 action.

On September 12, 2003, the State of Wyoming submitted to EPA a request for approval of revisions containing changes in the structure and number of the State's SIP provisions, but containing no substantive changes. Following EPA's approval of these renumbering revisions, the State of Wyoming plans to submit to EPA requests for substantive changes and updates to its SIP provisions.

B. Did Wyoming Follow the Proper Procedures for Adopting This Action?

Section 110(k) of the Act addresses our actions on submissions of SIP revisions. The Act also requires States to observe certain procedures in developing SIP revisions. We have evaluated the State's submission and determined that the necessary procedures were followed. We also must determine whether a submittal is complete and therefore warrants further review and action (*see* section 110(k)(1) of the Act). We reviewed the State's September 12, 2003 submission against our completeness criteria in 40 CFR Part 51, Appendix V. We determined this submission was complete and notified the State in a letter dated January 22, 2004.

C. Evaluation of September 12, 2003 Submittal

We reviewed the September 12, 2003 submittal and found that the renumbered and restructured revisions of the Wyoming Air Quality Standards and Regulations contain no substantive changes from the prior codification that is approved into the SIP.[1]

The September 12, 2003 letter indicates that, once EPA approves the renumbered and restructured SIP regulations, the State will submit other SIP revisions that have already been adopted at the State level. The letter further states that these already-adopted revisions clarify director discretion provisions, correct outdated references to reference methods, add a new section on credible evidence, update the definition of volatile organic compounds, and update other provisions of the rules to make them consistent with federal regulations. In addition, the letter mentions that the State is working on additional changes to the SIP such as equipment malfunction provisions. Finally, the letter indicates that once the renumbering is in place, and as the State reopens chapters to make changes, it will respond to public comment, by EPA or other interested stakeholders, on any aspect of the chapters under consideration.

In a March 22, 2004 letter to the Wyoming Department of Environmental Quality (DEQ), EPA sought further clarification on the commitment mentioned in the September 12, 2003 letter. Specifically, we questioned whether the commitment in the September 12, 2003 letter extended to addressing additional concerns EPA had with the State regulations (*e.g.*, additional director discretion provisions not already corrected by the DEQ; additional revisions to the reference methods not already corrected by the DEQ; provisions in the regulations allowing alternative opacity limits; stack height definitions; visibility provisions; equipment malfunction provisions; and other clarifications) and the timeframe for submitting revisions to the regulations.

In a March 29, 2004 letter from the Wyoming DEQ to EPA, the DEQ indicated that it was DEQ's intent and commitment to address additional EPA concerns as DEQ submits SIP revisions to incorporate changes in the SIP that have already been adopted at the State level. With respect to the timing of future SIP revisions, the DEQ indicated that DEQ would take a phased approach to making changes to the regulations and that it was DEQ's intent to begin the process by addressing Chapters 1 and 2. The DEQ indicated that a number of EPA's concerns are in Chapters 1 and 2. The DEQ indicated that they would identify the timing of this first phase of the process within 30 days of notice of EPA's final approval of the current restructuring and renumbering proposal.

Because the September 12, 2003 submittal only restructures and renumbers the existing SIP–approved regulations, contains no substantive changes, and commits to submit further revisions in the future, we believe it is appropriate to propose to approve the submittal. Approving the restructured and renumbered WAQS&R into the SIP will also facilitate future discussions on the rules.

III. Proposed Action

EPA is proposing to approve the restructuring and renumbering of the WAQS&R as a revision to the Wyoming State Implementation Plan (SIP). Specifically, we are proposing that the following renumbered SIP chapters and sections replace the prior numbered SIP chapter and sections in the federally approved SIP: Chapter 1, Section 2—Authority; Chapter 1, Section 3—Definitions; Chapter 1, Section 4—Diluting and concealing emissions; Chapter 1, Section 5—Abnormal conditions and equipment malfunction; Chapter 2, Section 2—Ambient standards for particulate matter; Chapter 2, Section 3—Ambient standards for nitrogen oxides; Chapter 2, Section 4—Ambient standards for sulfur oxides; Chapter 2, Section 5—Ambient standards for carbon monoxide; Chapter 2, Section 6—Ambient standards for ozone; Chapter 2, Section 8—Ambient standard for suspended sulfates; Chapter 2, Section 10—Ambient standards for lead; Chapter 3, Section

[1] During the review of the September 12, 2003 submittal, EPA identified typographical errors and incorrect cross references. In a January 12, 2004 letter, the State of Wyoming addressed these two items. The State provided replacement pages for the following typographical errors: (1) Page 12 of the regulations, Figure 1, "Particulate Emission Limits", the division line was missing in the equation, and the bottom lines (equal signs) were also missing from the "less than or equal to" (≤) symbols in the same figure; (2) page 51 of the regulations, Stauffer Chemical Plant source description labeled 2ES–1 instead of 2ES–2; (3) page 54 of the regulations, FMC Corporation source description for a coal boiler labeled NS–1B instead of NS–1A. The State also committed to correct in a future rulemaking the following cross references on page 50 of the SIP: (1) in paragraph (*vii*), "paragraph 23(a)(vi)(A)" should read "Chapter 7, Section 2(a)(vi)(A)"; (2) in paragraph *(b)*, "paragraph 23(a)" should read "Chapter 7, Section 2(a)."

2—Emission standards for particulate matter; Chapter 3, Section 3—Emission standards for nitrogen oxides; Chapter 3, Section 4—Emission standards for sulfur oxides; Chapter 3, Section 5—Emission standards for carbon monoxide; Chapter 3, Section 6—Emission standards for volatile organic compounds; Chapter 4, Section 2—Existing sulfuric acid manufacturing plants; Chapter 4, Section 3—Existing nitric acid manufacturing plants; Chapter 6, Section 2—Permit requirements for construction, modification and operation; Chapter 6, Section 4—Prevention of significant deterioration; Chapter 7, Section 2—Continuous monitoring requirements for existing sources; Chapter 8, Section 2—Sweetwater County particulate matter regulations; Chapter 8, Section 3—Conformity of general federal actions to state implementation plans; Chapter 9, Section 2—Visibility; Chapter 10, Section 2—Open burning restrictions; Chapter 10, Section 3—Woodwaste burners; Chapter 12, Section 2—Air pollution emergency episodes; Chapter 13, Section 2—Motor vehicle pollution control. These renumbered provisions contain no substantive changes to the text of currently approved SIP rules.

The following table cross references the renumbered and prior numbered SIP chapters and sections.

STATE IMPLEMENTATION PLAN.—TABLE OF CORRESPONDING CHAPTERS/SECTIONS

Title (renumbered SIP section)	Renumbered SIP section	Prior numbered SIP section
Authority	Chapter 1, Section 2	Chapter 1, Section 1.
Definitions	Chapter 1, Section 3	Chapter 1, Section 2.
Diluting and concealing emissions	Chapter 1, Section 4.	Chapter 1, Section 18.
Abnormal conditions and equipment malfunction	Chapter 1, Section 5	Chapter 1, Section 19.
Ambient standards for particulate matter	Chapter 2, Sections 2a and 2c	Chapter 1, Section 3.
Ambient standards for nitrogen oxides	Chapter 2, Section 3	Chapter 1, Section 10a.
Ambient standards for sulfur oxides	Chapter 2, Section 4	Chapter 1, Section 4a.
Ambient standards for carbon monoxide	Chapter 2, Section 5	Chapter 1, Section 12a.
Ambient standards for ozone	Chapter 2, Section 6	Chapter 1, Section 8.
Ambient standards for suspended sulfates	Chapter 2, Section 8	Chapter 1, Section 6.
Ambient standards for lead	Chapter 2, Section 10	Chapter 1, Section 26.
Emission standards for particulate matter	Chapter 3, Section 2	Chapter 1, Section 14.
Emission standards for nitrogen oxides	Chapter 3, Section 3	Chapter 1, Section 10b–c, excluding 10b(6).
Emission standards for sulfur oxides	Chapter 3, Section 4	Chapter 1, Section 4c, 4(h).
Emission standards for carbon monoxide	Chapter 3, Section 5	Chapter 1, Section 12b.
Emission standards for VOCs	Chapter 3, Section 6	Chapter 1, Section 9.
Existing sulfuric acid production units	Chapter 4, Section 2	Chapter 1, Section 5(a), 4b.
Existing nitric acid manufacturing plants	Chapter 4, Section 3	Chapter 1, Section 10b(6).
Permit requirements for construction, modification and operation	Chapter 6, Section 2	Chapter 1, Section 21.
Prevention of significant deterioration	Chapter 6, Section 4	Chapter 1, Section 24.
CEM requirements for existing sources	Chapter 7, Section 2	Chapter 1, Section 23.
Sweetwater County particulate matter regulations	Chapter 8, Section 2	Chapter 1, Section 25.
Conformity of general federal actions to state implementation plans	Chapter 8, Section 3	Chapter 1, Section 32.
Visibility	Chapter 9, Section 2	Chapter 1, Section 28.
Open burning restrictions	Chapter 10, Section 2	Chapter 1, Section 13.
Woodwaste burners	Chapter 10, Section 3	Chapter 1, Section 15.
Air pollution emergency episodes	Chapter 12, Section 2	Chapter 1, Section 20.
Motor vehicle pollution control	Chapter 13, Section 2	Chapter 1, Section 17.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 29, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–10552 Filed 5–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. SD–001–0017b; FRL–7652–2]

Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; Revisions to the Administrative Rules of South Dakota and New Source Performance Standards Delegation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on September 12, 2003. The September 12, 2003 submittal revises the Administrative Rules of South Dakota, Air Pollution Control Program, by modifying the chapters pertaining to definitions, operating permits for minor sources, new source review and performance testing. In addition, the State made revisions to the Prevention of Significant Deterioration program, which has been delegated to the State. The intended effect of this action is to make these revisions federally enforceable. We are also announcing that on October 31, 2003, we updated the delegation of authority for the implementation and enforcement of the New Source Performance Standards to the State of South Dakota. These actions are being taken under sections 110 and 111 of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before June 9, 2004.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section in the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection Monday through Friday, 8 a.m. to 4 p.m., excluding Federal Holidays, at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, 999 18th Street, Suite 300, MS 8P–AR, Denver, CO 80202, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 7, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–10340 Filed 5–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # AK–04–001; FRL–7659–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Alaska; Anchorage Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 18, 2004, the State of Alaska submitted a carbon monoxide (CO) maintenance plan for the Anchorage CO nonattainment area to EPA for approval. The State concurrently requested that EPA redesignate the Anchorage CO nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for CO. In this action, EPA is proposing approval of the maintenance plan and redesignation of the Anchorage CO nonattainment area to attainment.

DATES: Comments must be received on or before June 9, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. AK–04–001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: R10aircom@epa.gov.*
- *Fax:* (206) 553–0110.
- Mail: Office of Air Quality, Environmental Protection Agency, Mail code: OAQ–107, 1200 Sixth Ave., Seattle, Washington 98101.

• Hand Delivery: Environmental Protection Agency, 14th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. AK–04–001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Publicly available docket materials are available in hard copy at the Office of Air Quality, Environmental Protection Agency, Mail code: OAQ–107, 1200 Sixth Ave., Seattle, Washington 98101, open from 8 a.m.–4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553–1086. Copies of the submittal, and other information relevant to this proposal are available for public inspection during normal business hours at the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality, Region 10, Mail code OAQ–107, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; telephone number: (206) 553–1086; fax number: (206) 553–0110; e-mail address: *robinson.connie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking?

EPA is proposing to approve the Anchorage CO Maintenance plan and redesignate the Anchorage area from nonattainment for CO to attainment as requested by the Governor of Alaska on February 18, 2004. The maintenance plan demonstrates that Anchorage will be able to remain in attainment for the next 10 years. The Anchorage, Alaska CO nonattainment area is eligible for redesignation to attainment because air quality data shows that it has not recorded a violation of the primary or secondary CO air quality standards since 1996.

III. What Is the Background for This Action?

Upon enactment of the 1990 Clean Air Act Amendments (the Act), areas meeting the requirements of section 107(d) of the Act were designated nonattainment for CO by operation of law. Under section 186(a) of the Act, each CO nonattainment area was also classified by operation of law as either moderate or serious depending on the severity of the area's air quality problems. Anchorage was classified as a

moderate CO nonattainment area. Moderate CO nonattainment areas were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. Anchorage did not have the two years of clean data required to attain the standard by the required attainment date for CO moderate areas. Under section 186(a)(4) of the Act, Alaska requested and EPA granted a one-year extension of the attainment date deadline to December 31, 1996 (61 FR 33676, June 28, 1996). If a moderate CO nonattainment area was unable to attain the CO NAAQS by the attainment date deadline, the area was reclassified as a serious CO nonattainment area by operation of law. Anchorage was unable to meet the CO NAAQS by December 31, 1996, and was reclassified as a serious nonattainment area effective July 13, 1998.

On July 12, 2001, EPA made a determination based on air quality data that the Anchorage CO nonattainment area in Alaska attained the NAAQS for CO by December 31, 2000, the deadline for serious areas as required by the Act. (See 66 FR 36476, July 12, 2001.)

On January 4, 2002, the Alaska Department of Environmental Conservation submitted the Anchorage CO attainment plan as a revision to the Alaska SIP. We reviewed and subsequently approved the revision effective October 18, 2002. (See 67 FR 58711, September 18, 2002.)

IV. What Evaluation Criteria Were Used for the Maintenance Plan and Redesignation Request Review?

Section 107(d)(3)(E) of the Act states that EPA can redesignate an area to attainment if the following conditions are met:

A. The area has attained the applicable NAAQS.

B. The area has a fully approved SIP under section 110(k) of the Act and the area meets all the relevant requirements under section 110 and part D of the Act.

C. The air quality improvement is permanent and enforceable.

D. The area has a fully approved maintenance plan under section 175A of the Act.

V. EPA's Evaluation of the Anchorage Maintenance Plan and Redesignation Request

EPA has reviewed the State's maintenance plan and redesignation request. The following is a summary of EPA's evaluation and a description of how each of the requirements is met.

A. How Does the State Show the Area Has Attained the CO NAAQS?

To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard in a year at any monitoring site in the nonattainment area for at least two consecutive years. The proposed redesignation of Anchorage is based on air quality data that shows the CO standard was not violated from 1997 through 2003, or since. These data were collected by the Municipality of Anchorage (MOA) in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control, and entered in the EPA Air Quality System database. Since the Anchorage, Alaska area has complete quality-assured monitoring data showing attainment with no violations after 1977, the area has met the statutory criterion for attainment of the CO NAAQS and EPA has already found that the Anchorage area attained the NAAQS. The MOA has committed to continue monitoring in the area in accordance with 40 CFR part 58.

B. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?

Yes. Anchorage was classified as a moderate nonattainment area on enactment of the Act in 1990. Anchorage was unable to meet the CO NAAQS by December 31, 1996, and was reclassified a serious nonattainment area effective July 13, 1998. Therefore, the requirements applicable to the Anchorage nonattainment area for inclusion in the Alaska SIP included an attainment demonstration, base year emission inventory with periodic updates, an oxygenated gasoline program, basic motor vehicle inspection/maintenance (I/M) program, contingency measures, conformity procedures, and a permit program for new or modified major stationary sources. EPA has previously approved all elements required in the Alaska SIP.

C. Are the Improvements in Air Quality Permanent and Enforceable?

Yes. Emissions reductions were achieved through permanent and enforceable control measures in the attainment plan, including the Federal Motor Vehicle Control Program, establishing emission standards for new motor vehicles; an oxygenated gasoline program, and a basic I/M program.

The MOA has demonstrated that permanent and enforceable emission reductions are responsible for the air quality improvement and the CO emissions in the base year are not artificially low due to a local economic downturn or unusual or extreme weather patterns. We believe the combination of certain existing EPA-approved SIP and Federal measures resulted in permanent and enforceable reductions in ambient CO levels that have allowed the area to attain the CO NAAQS.

D. Has the State Submitted a Fully Approved Maintenance Plan Under Section 175A of the Act?

Today's action by EPA proposes approval of the Anchorage CO maintenance plan. Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation adequate to assure prompt correction of any air quality problems. Section 175(d) of the Act requires retention of all control measures contained in the SIP before redesignation as contingency measures in the CO maintenance plan. The oxygenated gasoline program, a control measure contained in the Anchorage SIP before redesignation, has been removed as a control measure and is now a primary contingency measure in the maintenance plan. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. The Anchorage CO maintenance plan meets the requirements of 175A.

E. Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?

Yes. The MOA submitted comprehensive inventories of CO emissions from point, area and mobile sources using 2002 as the attainment year. Since air monitoring recorded attainment of CO in 2002, this is an acceptable year for the attainment year inventory. This data was then used in calculations to demonstrate the CO standard will be maintained in future years. The MOA calculated projected inventories for 2004, 2006, 2008, 2013 and 2023. Future emission estimates are based on forecast assumptions about growth in population, employment and transportation.

Mobile sources are the greatest source of CO. Although vehicle use is expected to increase in the future, more stringent Federal automobile standards and removal of older, less efficient cars over time will still result in an overall decline in CO emissions. The projections in the maintenance plan demonstrate that future emissions are not expected to exceed attainment year levels.

Total CO emissions were projected from the 2002 attainment year out to 2023. These projected inventories were prepared according to EPA guidance. Because compliance with the 8–hour CO standard is linked to average daily emissions, emission estimates reflecting a typical winter season day (tons of CO a day) were used for the maintenance demonstration. The MOA calculated these emissions without the implementation of the oxygenated gasoline program. The projections show that CO emissions calculated without the implementation of the oxygenated gasoline program are not expected to exceed 2002 attainment year levels. The following table summarizes the 2002 attainment year emissions, and projects maintenance year emissions. The Anchorage Transportation Model was run for analysis years 2003, 2013 and 2023. Emissions for intervening years were calculated by a straight line interpolation; however, mobile source emission factors for all years evaluated were estimated by running MOBILE6.

TABLE 1.—ANCHORAGE 2002 CO ATTAINMENT YEAR ACTUAL EMISSIONS AND 2004, 2006, 2008, 2010, 2013, 2023 PROJECTED EMISSIONS

[Tons CO/winter day]

Year	Mobile	Non-road	Area	Point	Total
2002	92.94	12.87	13.03	1.45	120.29
2004	92.34	13.36	13.24	1.48	120.42
2006	91.01	13.84	13.37	1.51	119.73
2008	71.46	14.32	13.49	1.53	100.80
2010	67.72	14.80	13.60	1.56	97.68
2013	62.91	15.52	13.81	1.60	93.84
2023	60.45	17.85	16.22	1.86	96.38

Detailed inventory data for this action is contained in the docket maintained by EPA.

F. How Will This Action Affect the Oxygenated Gasoline Program in Anchorage?

The oxygenated gasoline program has been removed as a control measure. The MOA's maintenance demonstration shows the area is expected to continue to meet the CO NAAQS without the oxygenated gasoline program. The oxygenated gasoline program is a contingency measure in the maintenance plan.

G. How Will the State Continue to Verify Attainment?

Under 40 CFR part 58 and EPA's Redesignation Guidance, the MOA has committed to analyze air quality data annually to verify continued attainment of the CO NAAQS. The MOA will also conduct a comprehensive review of plan implementation and air quality status eight years after redesignation. The State will then submit a SIP revision that includes a full emissions inventory update and provides for the continued maintenance of the standard for 10 years beyond the initial 10-year period.

H. What Contingency Measures Does the State Provide?

The oxygenated gasoline program, a control measure contained in the SIP before redesignation, is a primary contingency measure in the maintenance plan. This contingency measure will be reinstated in the event of a quality-assured violation of the NAAQS for CO at any permanent monitoring site in the nonattainment area. A violation will occur when any monitoring site records two eight-hour average CO concentrations that exceed the NAAQS in a single calendar year. If triggered, this contingency measure would require all gasoline blended for sale in Anchorage to meet requirements identical to those of the oxygenated gasoline program. Implementation will continue throughout the balance of the CO maintenance period, or until a reassessment of the ambient CO monitoring data establishes the contingency measure is no longer needed and EPA agrees to a revision.

Maintenance projections presented by the MOA suggest the highest emissions will occur in the first few years (2004–2006) of the maintenance plan period. The MOA is implementing several new programs during the next few years. Transit service was expanded in July 2003 and additional route enhancements are slated to begin in 2004 and continue through 2006. The engine block heater and public awareness program will continue with a renewed focus on residential areas through 2006. Implementing these contingency measures provides an added measure of assurance of continued compliance with the NAAQS.

I. How Will the State Provide for Subsequent Maintenance Plan Revisions?

Under section 175Ab) of the Act, the State has agreed to submit a revised maintenance plan eight years after the area is redesignated to attainment. That revised SIP must provide for maintenance of the standard for an additional 10 years. It will include a full emissions inventory update and projected emissions demonstrating continued attainment for 10 additional years.

J. How Does This Action Affect Transportation Conformity in Anchorage?

Under section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under 23 U.S.C. or the Federal Transit Act, must conform to the applicable SIPs. A transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. For transportation conformity and regional emissions analysis purposes, an emissions budget has been established for on-road motor vehicle emissions in the Anchorage maintenance area. The transportation

emissions budgets for the plan are shown in Table 2.

TABLE 2.—ANCHORAGE MAINTENANCE AREA MOTOR VEHICLE EMISSIONS BUDGETS THROUGH 2023 AND BEYOND

[Tons CO/winter day]

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Budget	111.0	110.7	110.4	110.0	109.7	109.4	109.1	108.8	108.5	108.1
Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Budget	107.1	106.6	106.1	105.6	105.1	104.6	104.1	103.6	103.1	103.1

Emission budgets for years beyond 2023 are to be computed through linear extrapolation with the following equation: Mobile Source Emission Budget (tons per day) = 0.438 × Year − 2023 + 103.34.

EPA found these motor vehicle emissions budgets adequate for conformity purposes. See 69 FR 12651, March 17, 2004.

VI. Proposed Action

EPA is proposing approval of the Anchorage CO Maintenance Plan and redesignation of the Anchorage CO nonattainment area to attainment. This proposed redesignation is based on validated monitoring data and projections made in the maintenance demonstration. EPA believes the area will continue to meet the NAAQS for CO for at least 10 years beyond this redesignation, as required by the Act. Alaska has demonstrated compliance with the requirements of section 107(d)(3)(E) based on information provided by the MOA and contained in the Alaska SIP and Anchorage, Alaska CO maintenance plan. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the redesignation of the Anchorage CO nonattainment area to attainment.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 29, 2004.

Julie Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 04–10553 Filed 5–7–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–964; MB Docket No. 04–146; RM–10871]

Radio Broadcasting Services; Fort Rucker, Ozark & Slocomb, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Sytles Media Group, LLC and Styles Broadcasting of Dothan, Inc. requesting the substitution of Channel 26C3C for Channel 263A at Fort Rucker, AL, reallotment of Channel 263C3 from

Fort Rucker, AL to Slocomb, AL, and modification of the license for Station wxus to specify operation at Slocomb. Channel 263C3 can be allotted to Slocomb at coordinates 31–06–36 and 85–35–40. To preserve local service at Fort Rucker, LA, petitioner also requests the reallotment of Channel 280C3 from Ozark, AL to Fort Rucker, AL and modification of the license for Station WJRL to specify operation at Fort Rucker. The coordinates for Channel 280C3 at Fort Rucker are 31–26–63 and 85–32–21. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 263C3 at Slocomb or Channel 280C3 at Fort Rucker.

DATES: Comments must be filed on or before June 7, 2004, and reply comments on or before June 22, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Marissa G. Repp, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–146, adopted April 12, 2004, and released April 14, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 263A and by adding Channel 280C3 at Fort Rucker, by removing Channel 280C3 at Ozark and by adding Slocomb, Channel 263C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10578 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1023; MB Docket No. 04–150; RM–10957]

Radio Broadcasting Services; Burlington and Trenton, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Nassau Broadcasting II, L.L.C. requesting the reallotment of Channel 248B from Trenton, New Jersey, to Burlington, New Jersey, and modification of the license for Station WPST to reflect the changes. Channel 249B can be allotted to Burlington at coordinates 40–14–05 and 74–46–02. The proposal complies with the provisions of section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 248B at Burlington.

DATES: Comments must be filed on or before June 10, 2004, and reply comments on or before June 25, 2004.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Scott Woodworth, Vinson & Elkins, L.L.P., 1455 Pennsylvania Avenue, Suite 600, Washington, DC 20004–1008.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–150, adopted April 14, 2004, and released April 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by adding Burlington, Channel 248B and by removing Channel 248B at Trenton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–10583 Filed 5–7–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 90
Monday, May 10, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–04–07]

Flue-Cured Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) announcement is made of a forthcoming meeting of the Flue-Cured Tobacco Advisory Committee.

DATES: The meeting will be held on June 10, 2004, at 1 p.m.

ADDRESSES: The meeting will be held at the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to recommend opening dates and selling schedules, and discuss other related issues for the 2004 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by June 4, 2004, and inform us of your needs.

Dated: May 4, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–10511 Filed 5–7–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215.5 and 36 CFR 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR 218.4 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, notices of proposed actions under 35 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR parts 215 and 217. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in more than one state of the

14 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal-Constitution, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the newspaper of record elected by the National Forest of that state or Ranger District.

National Forests in Alabama

District Ranger Decision:
Montgomery Advertiser, published daily in Montgomery, AL.

District Ranger Decisions:
Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Andalusia. AL.
Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.
Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.
Talladega Ranger District: The Daily Home, published daily in Talladega, AL.
Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:
El Nuevo Dia, published daily in Spanish in San Juan, PR.
San Juan Star, published daily in English in San Juan, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:
The Times, published daily in Gainsville, GA.

District Ranger Decisions:
Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayetta, GA.
Brasstown Ranger District: North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.
Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.
Chattooga Ranger District: Northeast Georgian, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.
Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday & Friday) in Toccoa, GA.
White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA.
The Dahlonega Nuggett, (secondary) published weekly (Thursday) in Dahlonega, GA.
Cohutta Ranger District: Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA.
Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA.
Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA.
Toccoa Ranger District: The News Observer, (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.
The Dahlonega Nuggett: (secondary) published weekly (Wednesday) in Dahlonega, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:
Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions:
Nolichucky-Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN.
Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.
Tellico Ranger District: Monroe County Advocate, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.
Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:
Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions:
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.
Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY.
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY.
Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Stanton, KY.
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions:
The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions:
Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.
Osceola Ranger District: The Lake City Reporter, published daily (Monday-Saturday) in Lake City, FL.
Seminole Ranger District: The Daily Commerical, published daily in Leesburg, FL.
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:
The State, published daily in Columbia, SC

District Ranger Decisions:
Andrew Pickens Ranger District: The Daily Journal, published daily (Tuesday through Saturday) in Seneca, SC.
Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.
Long Cane Ranger District: The State, published daily in Columbia, SC.
Wambaw Ranger District: Post and Courier, published daily in Charleston, SC.
Witherbee Ranger District: Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions:
Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions:
Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN.
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA.
Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.
Glenwood/Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA.

James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA.
Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.
New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA.
New River Ranger District: Roanoke Times, published daily in Roanoke, VA.
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:
The Town Talk, published daily in Alexandria, LA.
District Ranger Decisions:
Calcasieu Ranger District: The Town Talk, (newspaper of record) published daily in Alexandria, LA.
The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA.
Caney Ranger District: Minden Press Herald, (newspaper of record) published daily in Minden, LA.
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.
Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA.
Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday through Friday and on Sunday) in Natchitoches, LA.
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions:
The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:
Clarion-Ledger, published daily in Jackson, MS.
District Ranger Decisions:
Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.
De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:
The Asheville Citizen-Times, published daily in Asheville, NC.
District Ranger Decisions:
Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.
Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.
Croatan Ranger District: The Sun Journal, published daily (except Saturday) in New Bern, NC.
Grandfather Ranger District: McDowell News, published daily in Marion, NC.
Highlands Ranger District: The Highlander, published weekly (mid May–mid Nov., Tues. & Fri.; mid Nov.–mid May, Tues. only) in Highlands, NC.
Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.
Wayah Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
District Ranger Decisions:
Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Jessieville/Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Mena/Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) Tulsa World, published daily in Tulsa, OK.
Poteau/Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Ozark-St. Francis National Forest, Arkansas

Forest Supervisor Decisions:
The Courier, published daily (Tuesday through Sunday) in Russellville, AR
District Ranger Decisions:
Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
Boston Mountain Ranger District: Southwest Times Record published daily in Fort Smith, AR.
Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR.
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.
St. Francis National Forest: The Daily World, published daily (Sunday through Friday) in Helena, AR.
Sylamore Ranger District: Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas

Forest Supervisor Decisions:
The Lufkin Daily News, published daily in Lufkin, TX.
District Ranger Decisions
Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX.
Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Sam Houston National Forest: The Courier, published in Conroe, TX.

Dated: May 3, 2004.

Roberta A. Moltzen,

Deputy Regional Forester.

[FR Doc. 04–10528 Filed 5–7–04; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service Action: Notice of Meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Thursday, May 27, 2004. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (P.L. 104–208) directed the Secretary of Agriculture to establish the Opal creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics:

Introduction of New Members and Discuss Roles and Expectations;

Current Project Updates;

Management Plan Implementation Timeline;

Discuss Monitoring Plan;

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the May 27 meeting by sending them to Designated Federal Official Paul Matter at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Paul Matter; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: May 3, 2004.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 04–10527 Filed 5–7–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, May 27, 2004, at the Mt. Baker Ranger District office, 810 State Route 20, Sedro Woolley, WA, and on Thursday, June 3, 2004, at the Whatcom County Parks and Recreation Department Conference Room, 3373 Mt. Baker Highway, Bellingham, WA. Both meetings will begin at 9 a.m.

The purpose of the meeting will be to review and prioritize projects under consideration for FY 2005 Title II funding under the Secure Rural Schools and Community Self-Determination Act.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: May 4, 2004.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 04–10530 Filed 5–7–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATES AND TIMES: Monday, May 17, 2004, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 9, 2004 Meeting
III. Announcements
IV. Staff Director's Report
V. Closed Meeting To Discuss Personnel Matters
VI. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications, (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 04–10653 Filed 5–6–04; 12:34 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Financial Report (QFR).

Form Number(s): QFR–103(NB), QFR–101(MG), QFR–102(TR), and QFR–101A(MG).

Agency Approval Number: 0607–0432.

Type of Request: Extension of a currently approved collection.

Burden: 84,576 hours.

Number of Respondents: 14,353.

Avg Hours Per Response: 2 hours and 6 minutes.

Needs and Uses: The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to calculation of key U.S. Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires

that financial statistics of business operations be collected and published quarterly. Public Law 105–252 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 2005. The Census Bureau is currently reviewing steps necessary to reauthorize that authority. The main purpose of the QFR is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. Diverse groups use these data including foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations. The primary users are U.S. Governmental organizations charged with economic policymaking responsibilities. These organizations play a major role in providing guidance, advice, and support to the QFR Program.

Affected Public: Business or other for-profit.

Frequency: Quarterly and annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 91 and Public Law 105–252.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 4, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10505 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2005 New York City Housing and Vacancy Survey.

Form Number(s): H–100, H–105, H–108, H–100L, H–100L(A).

Agency Approval Number: 0607–0757.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 8,967 hours.

Number of Respondents: 18,000.

Avg Hours Per Response: Occupied units—30 minutes, Vacant Units—10 minutes, Reinterview—10 minutes.

Needs and Uses: The U.S. Census Bureau requests OMB clearance to conduct the 2005 New York City Housing and Vacancy Survey (NYCHVS). The Census Bureau will conduct this survey for the New York City Department of Housing Preservation and Development (NYCHPD). Pursuant to the Local Emergency Housing Rent Control Act (Chapter 8603, Laws of New York, 1963, as amended by Chapter 657, Laws of New York, 1967) and Sections 26–414 and 26–415 of the Administrative Code of the City, a survey is required in order to determine the supply, condition, and vacancy rate of housing in the city. The NYCHPD must take this survey every three years. The Census Bureau has conducted this survey for the city since 1962, most recently in 2002.

Census Bureau interviewers will conduct personal visit interviews for a sample of housing units in the City, the vast majority of which are rental units in multi-unit rental structures (apartment buildings). Single-family rental or owner-occupied units (houses), however, are not excluded from the sample. We will interview residents (occupied units) or other knowledgeable people such as a building manager, superintendent, or rental or real estate agent (vacant units) to gather information on vacancy rates, housing costs, and the income of residents. About ten percent of the sample will be reinterviewed for quality control purposes. We will also determine primarily by observation whether a separate sample of units previously lost from the City's housing inventory have been reconverted for residential use.

The 2005 NYCHVS will be an up-to-date and comprehensive data source required by rent control laws as well as a source of data needed to evaluate the city's housing policies. Specifically, the city will look to the 2005 survey to provide accurate and reliable estimates of the rental and homeowner vacancy rates, to measure improvements in housing and neighborhood conditions, and to provide data on low-income, doubled-up, and crowded households at risk of becoming homeless. The city will use the results to develop programs and policies that aim to improve housing conditions.

Affected Public: Individuals or households, Business or other for-profit.

Frequency: Every three years.

Respondent's Obligation: Voluntary.

Legal Authority: Local Emergency Housing Rent Control Act (Chapter 8603, Laws of New York, 1963, as amended by Chapter 657, Laws of New York, 1967) and Sections 26–414 and 26–415 of the Administrative Code of the City; Title 13 U.S.C., Section 8b.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 4, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10506 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—Voting and Registration Supplement November 2004

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW.,

Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dameka Reese, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting clearance for the collection of data concerning the Voting and Registration Supplement to be conducted in conjunction with the November 2004 CPS. The Census Bureau sponsors these questions, which have been collected biennially in the CPS since 1964.

This survey has provided statistical information for tracking historical trends of voter and nonvoter characteristics in each Presidential or Congressional election since 1964. The data collected from the November supplement relates demographic characteristics (age, sex, race, education, occupation, and income) to voting and nonvoting behavior. The November CPS supplement is the only source of data that provides a comprehensive set of voter and nonvoter characteristics distinct from independent surveys, media polls, or other outside agencies. Federal, state, and local election officials use these data to formulate policies relating to the voting and registration process. College institutions, political party committees, research groups, and other private organizations also use the voting and registration data.

II. Method of Collection

The voting and registration information will be collected by both personal visit and telephone interviews in conjunction with the regular November CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0466.
Form Number: There are no forms. We conduct all interviewing on computers.
Type of Review: Regular.
Affected Public: Households.
Estimated Number of Respondents: 48,000.
Estimated Time Per Response: 1.5 minutes.
Estimated Total Annual Burden Hours: 1,200.
Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 2004.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 04–10507 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; BEES Please

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Barbara C. Lippiatt, Economist, NIST, (301) 975–6133. In addition, written comments may be sent via e-mail to *blippiatt@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Over the last ten years, the Building and Fire Research Laboratory of the National Institute of Standards and Technology (NIST) has developed and automated an approach for measuring the life-cycle environmental and economic performance of building products. Known as BEES (Building for Environmental and Economic Sustainability), the tool reduces complex, science-based technical content (*e.g.*, over 400 material and energy flows from raw material extraction through product disposal) to decision-enabling results and delivers them in a visually intuitive graphical format. BEES Please is a voluntary program to collect data from product manufacturers so that the environmental performance of their products may be evaluated scientifically using BEES.

NIST will publish in BEES an aggregated version of the data collected from manufacturers that protects data confidentiality, subject to manufacturer's review and approval. BEES measures environmental performance using the environmental life-cycle assessment approach specified in the ISO 14040 series of standards. All stages in the life of a product are analyzed: Raw material acquisition, manufacture, transportation, installation, use, and recycling and waste management. Economic performance is measured using the ASTM standard life-cycle cost method, which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal.

II. Method of Collection

Data on materials use, energy consumption, waste, and environmental releases will be collected using an electronic, MS Excel-based questionnaire. An electronic, MS Word-based User Manual accompanies the questionnaire to help in its completion.

III. Data

OMB Number: 0693–0036.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 30.

Estimated Time Per Response: 62.5 hours

Estimated Total Annual Respondent Burden Hours: 1,875.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10503 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050404A]

Endangered Species; File No. 1432

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Jeanette Wyneken, Assistant Professor, Florida Atlantic University, Dept. of Biological Sciences, 777 Glades Rd., Boca Raton, FL 33431, has applied in due form for a permit to take loggerhead sea turtles (*Caretta caretta*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 9, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (813)570–5301; fax (813)570–5517.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1432.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Jefferies, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to take up to 30 loggerhead sea turtle hatchlings per site at 10 sites (Onslow Beach, Kiawah Island, Hilton Head Island, Wassaw Island, Melbourne Beach, Hutchinson Island, Juno Beach, Boca Raton, Sanibel/Captiva and vicinity including waters near Ft. Meyers, and Sarasota) for scientific research. Turtles will be captured on the beach under permits issued by the States of North Carolina, South Carolina, Georgia, and Florida, and attached with a "Witherington Float." The floats used to track loggerheads are 2 inches (5 cm) long and ¾ inches (1.9 cm) deep and shaped like a racing sailboat hull. The hull is hollowed and fitted with a flattened piece of split-shot in the bottom and a small eye formed of wire sunk to the balsa wood to attach one end of a cotton thread. The "deck" is hollowed out and holds a very small cynalume (cold chemical glow stick) and the hull is painted black. The cynalume is only visible from the top. The float is tethered with a thin cotton sewing thread and the other end of the thread tether (approx. 10 ft or 3 m long) is attached to the turtle by slip knot around the shell behind the foreflippers. The thread will break away and fall off in about two hours in saltwater. Turtles will be released at water's edge and followed to determine survivability. Turtles that are not lost to predators will be recaptured, the tether removed and released. The objective of this study is to document spatial variability in hatchling survivorship and provide revised values for other life stages.

Dated: May 4, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–10566 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042704E]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes, for public review and comment, information regarding a foreign fishing application submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by May 24, 2004.

ADDRESSES: Send comments or requests for a copy of the application to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

Comments on this notice may also be submitted by e-mail. The address for providing e-mail comments is *nmfs.foreignfishing@noaa.gov*. Include in the subject line the following document identifier: 042704E.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) provides, among other things, that the Secretary of Commerce (Secretary) may issue a transshipment permit which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated . . . an interest in performing the transportation at fair and reasonable rates." NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS has received an application requesting authorization for two Mexican vessels to receive, within the Pacific waters of the U.S. EEZ south of 38°00′ N. lat., transfers of live tuna from U.S. purse seiners for the purpose of transporting the tuna alive to an aquaculture facility located in Baja California, Mexico.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).

Dated: May 3, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–10567 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 001215353–4139–04]

Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT): Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: Pursuant to the Consolidated Appropriations Act, 2004, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account.

DATES: Applications must be received on or before 5 p.m. Eastern Daylight Saving Time, June 9, 2004. Applications submitted by facsimile or electronic means are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after the deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*)

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

Electronic Access

The full funding opportunity announcement for the PEACESAT Fiscal Year (FY) 2004 grant cycle is available on the NTIA Web site: *www.ntia.doc.gov/otiahome/peacesat/FederalRegister.html* or by contacting NTIA at the address noted above. The full announcement is also available through *www.Grants.gov*.

Funding Availability

The Congress has appropriated $19.75 million for FY 2004 Public Telecommunications Facilities Program (PTFP) and PEACESAT awards. For FY 2003, NTIA issued one award for the PEACESAT project in the amount of $484,977.

Statutory and Regulatory Authority

Funding for the PEACESAT Program is provided pursuant to Public Law 108–199, "The Consolidated Appropriations Act, 2004" and Public Law 106–113, "The Consolidated Appropriations Act, Fiscal Year 2000." Public Law 106–113 provides "That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds." The PEACESAT Program was authorized under P.L. 100–584 (102 Stat. 2970) and also P. L. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Public Law 108–199 appropriated $19.75 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. A solicitation notice for the PTFP Program was published in the **Federal Register** on February 11, 2004. Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the February 11, 2004 Notice and are exempt from the PTFP regulations at 15 CFR Part 2301. NTIA anticipates making a single award for approximately $500,000 for the PEACESAT Program in FY 2004.

Catalog of Federal Domestic Assistance: N/A.

Eligibility

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Evaluation and Selection Process

Each eligible application is evaluated by a panel of outside reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The review panel members will evaluate applications according to the criteria in the preceding section and provide individual written ratings of each application.

State Single Point of Contact (SPOC) offices, per Executive Order 12372, may provide recommendations on applications under consideration.

PTFP places a summary of applications received on the Internet. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. Listing does not preclude subsequent return of the application or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party. Applicants must make a copy of their application available for public inspection during normal business hours. Any opposing public comments must contain a certification that a copy of the comments has been delivered to the applicant. Public comment and replies from the applicant are considered during the evaluation of the application.

The PTFP program staff prepares summary recommendations for the Director of the Public Broadcasting Division. These recommendations incorporate the outside reviewers' ratings and incorporate analysis based on the degree to which a proposed project meets the PEACESAT Program purposes and cost eligibility as described in Sections IV and V of this announcement. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project, and (3) whether the reviewers consistently applied the evaluation criteria. The analysis by program staff is provided to the Director of the Public Broadcasting Division in writing.

The Director considers the summary recommendations prepared by program staff, recommends the funding order of the applications for the PTFP and PEACESAT Programs in three categories: "Recommended for Funding," "Recommended for Funding If Funds Are Available," and "Not Recommended for Funding." The Director presents recommendations to the Associate Administrator, Office of Telecommunications and Information Applications (OTIA), for review and approval.

Upon review and approval by the Associate Administrator of the Office of Telecommunications and Information Applications (OTIA), the Director's recommendations are presented to the Selecting Official, the Assistant Secretary for Communications and Information, who is the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award, taking into consideration the outside reviewers' ratings, the Director's recommendations, and the degree to which the slate of applications, taken as a whole, satisfies the PTFP and PEACESAT Programs' stated purposes.

The selected applications are negotiated between NTIA staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what NTIA is considering funding. Negotiation does not ensure that an award will be made. When the negotiations are completed, the Director recommends final selections to the NTIA Administrator, applying the same selection factors described above. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PTFP Program in 15 CFR 2301.1(a) and (c) and for the PEACESAT Program.

Evaluation Criteria

Each eligible application that is timely received, is materially complete, and proposes an eligible project will be considered under the evaluation criteria described here. The first three criteria—1. Meeting the Purposes of the PEACESAT Program, 2. Extent of Need for the Project, and 3. Plan of Operation for the Project—are each worth 25 points. Criterion 4, Budget and Cost Effectiveness, is worth 20 points. Criterion 5, Quality of Key Personnel, is worth 5 points.

Criterion 1. Meeting the Purposes of the PEACESAT Program, including (i) how well the proposal meets the objectives of the PEACESAT Program and (ii) how the objectives of the proposal further the purposes of the PEACESAT Program.

Criterion 2. Extent of Need for the Project. The extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) The needs addressed by the project; (ii) how the applicant identifies those needs; (iii) how those needs will be met by the project; and (iv) the benefits to be gained by meeting those needs.

Criterion 3. Plan of Operation for the Project, including (i) the quality of the design of the project; (ii) the extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) how well the objectives of the project relate to the purposes of the PEACESAT Program; (iv) the quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapped condition.

Criterion 4. Budget and Cost Effectiveness. The extent to which (i) the budget is adequate to support the project; and (ii) costs are reasonable in relation to the objectives of the project.

Criterion 5. Quality of Key Personnel the applicant plans to use on the project, including (i) the qualifications of the project director if one is to be used; (ii) the qualifications of each of the other key personnel to be used in the project; (iii) the time that each person will commit to the project; and (iv) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapped condition. In this section, "qualifications" refers to experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

Funding Priorities and Selection Factors

The selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Communications and Information for the PTFP Program are described in 15 CFR 2301.18. These selection factors are also used, as applicable, for selection of applications for funding for the PEACESAT Program.

Cost Sharing Requirements

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the February 11, 2004 Notice regarding the PTFP Program.

Intergovernmental Review

PEACESAT applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the Application Form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the PTFP website and at the Office of Management and Budget's home page at *http://*

www.whitehouse.gov/omb/grants/spoc.html.

Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet (*www.dunandbradstreet.com*).

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been approved under OMB Control No. 0660–0003.

Executive Order 12866

It has been determined that this notice is a "not significant" rule under Executive Order 12866.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 04–10538 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Customer Transactional Survey

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2004.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov*; or by facsimile at 703–308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Martin Rater, Statistician, Office of Corporate Planning, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone 703–305–4220; by facsimile at 703–305–8138; or by e-mail at *martin.rater@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

For over the past 10 years, the USPTO has used surveys to obtain customer feedback regarding the products, services, and related service standards of the USPTO. The USPTO uses the results from these surveys to measure how well the agency is meeting established customer service standards, to identify any disjoints between customer expectations and USPTO performance, and to develop customer satisfaction improvement strategies. Typically, these surveys ask customers to express their satisfaction with the USPTO's products and services based upon their interactions with the agency as a whole over a 12 month period.

To obtain further data concerning customer satisfaction with the USPTO's customer services, service standards, and the agency's performance, the USPTO has drafted the proposed Patent Customer Transactional Survey. This proposed survey allows the USPTO to further explore customer satisfaction with the legal positions of the examiners, the search functions of the various Automated Information Systems, and problem resolution at the USPTO. From past surveys, the USPTO has noted that these areas are key drivers of overall customer satisfaction. Additionally, the USPTO has found that approximately 70% of its customers prosecute more than 15 patent applications per year. With this volume of applications per customer, it is not practical for the USPTO to survey customers about anything beyond general satisfaction with a particular product or service. The Patent Customer Transactional Survey will allow the USPTO to gather more detailed information about these key drivers of customer satisfaction. This in turn enables the USPTO to develop efficient and cost-effective customer satisfaction improvement strategies.

The Patent Customer Transactional Survey is a mail survey, although respondents also have the option to complete the survey electronically. A survey packet, containing a one-page questionnaire (with a cover letter prepared by the Commissioner of Patents printed on the reverse side),and a postage-paid, pre-addressed return envelope will be mailed to respondents with the patent allowance. Instructions for completing the survey electronically will also be included. The survey packets will be mailed to randomly selected customers who were granted a patent from one of the eight technology centers during a six week period to commence with the start of the survey enumeration period.

The USPTO does not plan to pre-notify respondents about this survey or follow-up with those respondents who do not respond to this survey. This is a voluntary survey and all responses will remain confidential. The data that is collected will not be linked to the respondent and contact information that is used for sampling purposes will be maintained in a separate file from the quantitative data. Respondents are not required to provide any identifying information such as their name, address, or Social Security Number. In order to access and complete the online survey, respondents will need to use the username, password, and activation code provided by the USPTO.

These surveys do not have USPTO form numbers associated with them and once they are approved, they will carry the OMB Control Number and the expiration date.

II. Method of Collection

By mail or electronically over the Internet when respondents elect the online option to complete the survey.

III. Data

OMB Number: 0651–00XX.

Form Number(s): N/A.

Type of Review: New information collection.

Affected Public: Individuals or households; business or other for profit; not-for-profit institutions; Federal government; and State, local or tribal government.

Estimated Number of Respondents: 2,400 total responses per year. Of this total, the USPTO estimates that 1,680 surveys will be mailed and that 720 surveys will be completed using the online option.

Estimated Time Per Response: The USPTO estimates that it will take approximately five minutes (0.08 hours) to complete both the paper and online versions of this survey.

Estimated Total Annual Respondent Burden Hours: 192 hours per year.

Estimated Total Annual Respondent Cost Burden: $54,912. The USPTO believes that the patent attorneys of record will complete these surveys since they are being mailed to respondents with the patent allowance. Using a typical professional hourly rate of $286 for associate attorneys in private firms, the USPTO estimates that the salary costs for the respondents completing these surveys will be $54,912 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Patent Customer Transactional Survey	5 minutes	1,680	134
Electronic Patent Customer Transactional Survey	5 minutes	720	58
Totals		2,400	192

Estimated Total Annual Non-Hour Respondent Cost Burden: $0. There are no capital start-up, maintenance, or recordkeeping costs or filing fees associated with this information collection. The USPTO covers the costs of all survey materials and provides postage-paid, pre-addressed return envelopes for the completed mail surveys. Therefore, there are no postage costs associated with this information collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 4, 2004.

Susan K. Brown,

Records Officer, United States Patent and Trademark Office, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–10526 Filed 5–7–04; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed revision to Form EIA–910, "Monthly Natural Gas Marketer Survey". EIA is requesting a revision to add seven States and the District of Columbia to the survey frame, which consists of natural gas marketers.

DATES: Comments must be filed by July 9, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Elizabeth Campbell, Director of the Natural Gas Division. To ensure receipt of the comments by the due date, submission by FAX at (202) 586–4420 or e-mail at *elizabeth.campbell@eia.doe.gov* is recommended. The mailing address is: Elizabeth Campbell, Director, Natural Gas Division, Forrestal Building, EI–44, U.S. Department of Energy, Washington, DC 20585. Alternatively, Ms. Campbell may be contacted by telephone at (202) 586–5590.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Campbell at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information

is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA has been conducting the survey, Form EIA–910, "Monthly Natural Gas Marketer Survey," since August 2001 in the States of Georgia, Maryland, New York, Ohio and Pennsylvania. The survey collects information from natural gas marketers on the number of customers, volume, and revenue of natural gas sold to residential and commercial end-use customers. The data collected on the EIA–910 is combined with data collected from gas utility companies on Form EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries". The combined data are published as residential and commercial sector prices in the *Natural Gas Monthly* and *Natural Gas Annual* available at *http://www.eia.doe.gov.*

These States were identified by EIA as having some of the highest and most problematic levels of missing price data for the residential and commercial consumer sectors due to the active customer programs that allow customers to choose to purchase their gas from marketers instead of local distribution or utility companies. Based upon the data already collected on the EIA–910, EIA believes that customers purchase natural gas from marketers because the customers expect to pay lower prices for their gas than if the customers purchased the gas from the local distribution companies or pipelines that deliver the gas. Therefore, EIA's lack of coverage of sales by marketers may lead to price estimates that are higher than the actual prices paid. This bias in the data has serious implications for both public and private users of EIA's data. The implementation of the EIA–910 data to EIA's price estimates in the residential and commercial sectors in 2002 for the States of Georgia, Maryland, New York, Ohio and Pennsylvania has been successful in raising the percent coverage of natural gas prices at the national level from 92.2% in 2001 to 97.9% in 2002 in the residential sector and from 65.8% in 2001 to 78.4% in 2002 in the commercial sector.

Please refer to the proposed forms and instructions *http://www.eia.doe.gov/oil_gas/natural_gas/survey_forms/nat_survey_forms.html* for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA is requesting a revision to add seven States and the District of Columbia to the survey frame. Currently, EIA–910 respondents in Georgia, Maryland, New York, Ohio and Pennsylvania report the number of customers, volumes of natural gas sold, and revenues.

EIA is now proposing to expand the EIA–910 to include reporting in Florida, Illinois, Michigan, New Jersey, Massachusetts, Virginia, West Virginia and the District of Columbia. The selection of the additional States and the District of Columbia is based on the increasing percentage of natural gas sold by marketers and growth patterns in customer choice programs. This expansion of the EIA–910 survey will lead to improved quality of the natural gas price data in the residential and commercial sectors. For example, current published prices in the commercial sector for the proposed new States and the District of Columbia only represent 23 to 63 percent of commercial volumes consumed in those areas. The addition of the new States and the District of Columbia to the EIA–910 survey frame will bring the percent of volumes represented by published prices in the commercial sector to 100 percent in those areas.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is currently estimated to average two hours per monthly response per state. Approximately 87 new responses are expected as a result of the addition of these States and the District of Columbia, resulting in an increase in total annual burden of 2,088 hours. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, May 4, 2004.

Nancy Kirkendall,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–10547 Filed 5–7–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–266–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 30, 2004.

Take notice that on April 27, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective June 1, 2004:

Fourth Revised Sheet No. 247
Ninth Revised Sheet No. 273
Original Sheet No. 273A

Midwestern is requesting that the Commission accept certain potential non-conforming transportation agreements. Midwestern explains that such agreements contain language in the Term section that is different from the form of agreement currently contained in its Tariff. To rectify the inconsistency, Midwestern is proposing to amend Section 16 of the General Terms and Conditions of its Tariff to provide conformity between its Tariff and the agreements. In addition, Midwestern is notifying the Commission that one of the non-conforming agreements may contain a negotiated rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*,18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1045 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–149–000]

Stingray Pipeline Company, L.L.C.; Notice of Petition for Temporary Exemption

April 30, 2004.

Take notice that on April 27, 2004, Stingray Pipeline Company, L.L.C. (Stingray) filed a Petition for Temporary Exemption pursuant to section 7(c)(1)(B) of the Natural Gas Act. As more fully set forth in the petition, Stingray is seeking approval to deactivate, on a temporary basis, certain compressor units located at its offshore and onshore compressor stations.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 17, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1041 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–267–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

April 30, 2004.

Take notice that on April 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing with the Federal Energy Regulatory Commission, Second Revised Sheet No. 329 to its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of May 27, 2004.

Transco states that the purpose of the instant filing is to modify Transco's Policy for Construction of Interconnect Facilities set forth in Section 20 of the General Terms and Conditions of Transco's Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions. In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided in 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1040 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–100–000, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Filings

May 3, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket No. EC04–100–000]

Take notice that on April 28, 2004, American Electric Power Service Corporation (AEPSC), acting on behalf of its electric utility affiliates, Southwestern Electric Power Company (SWEPCO) and AEP Texas Central Company, formerly known as Central Power and Light Company (TCC), submitted an application for disclaimer of jurisdiction or, in the alternative, approval of the transfer of certain local distribution facilities to retail customers, pursuant to section 203 of the Federal Power Act (Act), 16 U.S.C. 824b (2003), and Part 33 of the Regulations of the Commission, as revised pursuant to Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000). AEPSC state that such transfers are proposed to be made to comply with the Texas Public Utility Regulatory Act and the Texas Utilities Code 39.051(a).

AEPSC states that a copy of the filing has been served on the Public Utility Commission of Texas, the Arkansas Public Service Commission, the Louisiana Public Service Commission, and on each wholesale customer served by SWEPCO or TCC.

Comment Date: May 19, 2004.

2. Llano Estacado Wind, LP, Northern Iowa Windpower LLC, Shell WindEnergy Inc., EWO Wind, LLC, and Entergy Asset Management, Inc.

[Docket Nos. EC04–101–000; ER02–73–004; ER02–257–002]

Take notice that on April 29, 2004, Llano Estacado Wind, LP (Llano Estacado), Northern Iowa Windpower LLC (NIW), Shell WindEnergy Inc. (Shell WindEnergy), EWO Wind, LLC (EWO Wind), and Entergy Asset Management, Inc. (EAM) (collectively, Applicants) filed with the Commission an application for authorization under section 203 of the Federal Power Act and notice of change in status with respect to the transfer of indirect, upstream interests in Llano Estacado and NIW. Applicants state that as a result of the proposed transaction, Shell WindEnergy, individually, and EAM and an affiliate, collectively, will each indirectly own 50 percent of Llano Estacado and 49.5 percent of NIW.

Comment Date: May 20, 2004.

3. Portland General Electric Company and PGE Trust

[Docket No. EC04–102–000]

Take notice that on April 29, 2004, Portland General Electric Company (Portland General), an electric utility for which Enron Corp. (Enron) owns all of the outstanding voting securities, and PGE Trust, a to-be-formed entity (collectively, the Applicants), filed with the Commission pursuant to section 203 of the Federal Power Act an Application for authorization of a possible interim transfer in control over Portland General from Enron to PGE Trust. Applicants state that PGE Trust would hold Enron's ownership interest in Portland General or the proceeds of a sale of such interests for further distribution.

Comment Date: May 20, 2004.

4. Coleto Creek WLE, LP

[Docket No. EG04–55–000]

On April 29, 2004, Coleto Creek WLE, LP (Coleto Creek), filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Coleto Creek states that the facility will consist of one coal-fired steam generating unit with a maximum net capability of 632 MW located near Victoria, Texas within the Electric Reliability Council of Texas.

Coleto Creek states that it has served a copy of this Application on the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

5. Nueces Bay WLE, LP

[Docket No. EG04–56–000]

On April 29, 2004, Nueces Bay WLE, LP (Nueces Bay), tendered for filing with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Nueces Bay states that its facility will consist of three natural gas-fired steam generating units with a maximum net capability of 559 MW located near Corpus Christi, Texas within the Electric Reliability Council of Texas.

Nueces Bay WLE, LP states that it has served a copy of this application on the Securities and Exchange Commission and all the affected State commissions.

Comment Date: May 20, 2004.

6. J. L. Bates, LP

[Docket No. EG04–57–000]

On April 29, 2004, J.L. Bates, LP (Bates) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Bates states that its facility will consist of two natural gas-fired steam generating units with a maximum net capability of 182 MW located near Mission, Texas within the Electric Reliability Council of Texas.

Bates states that it has served the documents upon the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

7. E.S. Joslin, LP

[Docket No. EG04–58–000]

On April 29, 2004, E.S. Joslin, LP (Joslin) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Joslin states that the facility will consist of one natural gas-fired steam generating unit with a maximum net capability of 254 MW located near Point Comfort, Texas within the Electric Reliability Council of Texas.

Joslin states that it has served a copy of this document upon the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

8. La Palma WLE, LP

[Docket No. EG04–59–000]

On April 29, 2004, La Palma WLE, LP (La Palma) filed with the Commission

an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. La Palma states that its facility will consist of three natural gas steam generating units with a maximum net capability of 203 MW and one combustion turbine unit with a maximum net capability of 52 MW located near San Benito, Texas within the Electric Reliability Council of Texas.

La Palma states that a copy of this document has been served on the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

9. Lon C. Hill, LP

[Docket No. EG04–60–000]

On April 29, 2004, Lon C. Hill, LP (Hill) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Hill states that its facility will consist of four natural gas-fired steam generating units with a maximum net capability of 559 MW located near Corpus Christi, Texas within the Electric Reliability Council of Texas.

Hill states that a copy of this filing has been served on the Securities and Exchange Commission and the affected State commissions.

Comment Date: May 20, 2004.

10. Victoria WLE, LP

[Docket No. EG04–61–000]

On April 29, 2004, Victoria WLE, LP (Victoria) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Victoria states that its facility will consist of three natural gas-fired steam generating units with a maximum net capability of 491 MW located near Victoria, Texas within the Electric Reliability Council of Texas.

Victoria states that it has served a copy of this document on the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

11. Barney M. Davis, LP

[Docket No. EG04–62–000]

On April 29, 2004, Barney M. Davis, LP (Davis) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Davis states that its facility will consist of two natural gas-fired steam generating units with a maximum net capability of 697 MW located near Corpus Christi, Texas within the Electric Reliability Council of Texas.

Davis states that it has served a copy of this document on the Securities and Exchange Commission and the affected State commissions.

Comment Date: May 20, 2004.

12. Eagle Pass WLE, LP

[Docket No. EG04–63–000]

On April 29, 2004, Eagle Pass WLE, LP (Eagle Pass) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Eagle Pass states that its facility will consist of three substantially identical hydroelectric units with a maximum net capability of 2 MW each located near Eagle Pass, Texas within the Electric Reliability Council of Texas.

Eagle Pass states that it has served a copy of this document on the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

13. Laredo WLE, LP

[Docket No. EG04–64–000]

On April 29, 2004, Laredo WLE, LP (Laredo), filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Laredo states that its facility will consist of three natural gas-fired steam generating units with a maximum net capability of 178 MW located near Laredo, Texas within the Electric Reliability Council of Texas.

Laredo states that it has served a copy of this document on the Securities and Exchange Commission and affected State commissions.

Comment Date: May 20, 2004.

14. ANP Hartwell Operations Company, LLC

[Docket No. EG04–65–000]

On April 29, 2004, ANP Hartwell Operations Company, LLC (Hartwell Operations), a Delaware limited liability corporation with its principal place of business in Marlborough, Massachusetts, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Hartwell Operations states that it operates a 300-MW power generation facility located in Hart County, Georgia (the Facility) and that the Facility is interconnected to the transmission system of the Georgia Integrated Transmission System. Hartwell Operations also states that it commenced operation of the Facility on April 8, 2004.

Hartwell Operations states that it has served a copy of the application on the Securities and Exchange Commission and the Georgia Public Service Commission.

Comment Date: May 20, 2004.

15. San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents

Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket No. EL00–95–000 and Docket No. EL00–98–000]

The staff of the Federal Energy Regulatory Commission is convening a conference to discuss a settlement reached by some of the parties in the above-captioned proceedings. The conference will be held on Tuesday, May 18, 2004 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, beginning at 10 a.m. (e.s.t.)

The purpose of the conference is to inform all interested parties of the terms of a settlement agreement recently entered into between (1) Dynegy Inc., NRG Energy, Inc., and West Coast Power, LLC (collectively Dynegy); (2) Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas and Electric Company, the People of the State of California, *ex rel.*, Bill Lockyer, Attorney General, the California Department of Water Resources, the California Public Utilities Commission, and the California Electricity Oversight Board (the California Parties); and (3) the Office of Market Oversight and Investigations of the Federal Energy Regulatory Commission. The settlement provides that other parties in the foregoing proceedings may elect to join the settlement as to Dynegy and receive refunds in accordance with the settlement's terms. A summary of the principal terms of the settlement will be served on all parties shortly. The conference will be governed by Rule 602 of the Commission's Rules of Practice and Procedures, 18 CFR 385.602 (2003).

For additional information concerning the conference, parties or their counsel may contact Robert Pease at *robert.pease@ferc.gov* or Lee Ann Watson at *leeann.watson@ferc.gov*.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1037 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2726–012 Idaho]

Idaho Power Company; Notice of Availability of Draft Environmental Assessment

May 3, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Malad Hydroelectric Project, located on the Malad River near Hagerman, Idaho, and has prepared a Draft Environmental Assessment (DEA) for the project.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number P–2726 to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. P–2726–012 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

For further information, contact John Blair (202) 502–6092.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1039 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–7–000]

Entrega Gas Pipeline Inc.; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Entrega Gas Pipeline Project, Request for Comments on Environmental Issues, and Notico Public Scoping Meetings and Route Inspection

May 3, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) on Entrega Gas Pipeline Inc.'s (Entrega) planned Entrega Gas Pipeline Project in northern Colorado and southern Wyoming. This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the planned project. Your input will help to determine which issues need to be evaluated in the EIS. The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. Please note that the scoping period will close on June 15, 2004.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the *Public Participation* section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meetings scheduled as follows:

SCHEDULE FOR PUBLIC SCOPING MEETINGS

Date and time	Location
Monday, June 7, 2004 at 7 p.m.	Best Western Hitching Post 1700 West Lincolnway, Cheyenne, WY.
Tuesday, June 8, 2004 at 7 p.m.	Hungry Miner Restaurant 2300 West Spruce, Rawlins, WY.
Wednesday, June 9, 2004 at 7 p.m.	Moffat County Extension Office—CSU 539 Barclay Street, Craig, CO.
Thursday, June 10, 2004 at 7 p.m.	CSU Extension 779 Sulfur Creek Road, Meeker, CO.

This notice is being sent to landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We[1] encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Entrega, an affiliate of EnCana Oil & Gas (USA) Inc., is planning to construct,

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

own, and operate a new 327-mile-long interstate natural gas pipeline that will extend from the Meeker Hub near the Town of Meeker in the Piceance Basin of Rio Blanco County, Colorado, to new interconnections with Colorado Interstate Gas Company and Wyoming Interstate Company near Wamsutter, Wyoming. From Wamsutter, the pipeline would turn eastward, continuing on to the Cheyenne Hub near Rockport in Weld County, Colorado.[2] The pipeline would be 36 inches in diameter between the Meeker Hub and Wamsutter, and 42 inches in diameter between Wamsutter and the Cheyenne Hub. Under the maximum proposed gas compression, this project could ultimately add up to 2.0 billion cubic feet per day of new capacity to transport natural gas from the Western Rocky Mountain Region to markets on interstate pipelines serving the Cheyenne Hub and beyond.

The project would include construction of five compressor stations and other appurtenant facilities, and would follow existing pipeline corridors for about 93 percent of the planned route.

A map depicting the planned pipeline route is provided in appendix 1.[3]

Entrega proposes to place the project in service in two phases. The 36–inch portion (Meeker Hub to Wamsutter) is proposed to commence service by the Fall of 2005. The remaining portion (Wamsutter to Cheyenne Hub) would commence service one year later. To achieve the initial in-service date, Entrega intends to request approval to begin construction of the pipeline facilities in the Spring of 2005.

Land Requirements

Construction of the pipeline would require about 5,159 acres of land. Where paralleling another pipeline, the new pipeline would typically be located about 40 feet from the existing pipeline. Entrega has proposed a pipeline construction right-of-way of 125 feet. The construction right-of-way may be expanded at special work areas (*e.g.*, steep slopes, major stream crossings). Entrega has requested an 80-foot-wide permanent right-of-way, although vegetation would be periodically cleared on only 50 feet of the permanent right-of-way.

The EIS Process

The FERC will be the lead Federal agency for the EIS process which is being conducted to satisfy the requirements of the National Environmental Policy Act (NEPA). NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity (Certificate).

NEPA also requires us to discover and address issues and concerns the public may have about proposals and to ensure those issues and concerns are analyzed in the EIS. This process is referred to as "scoping." The goal of the scoping process is to focus the analysis in the EIS on the important and potentially significant environmental issues related to the proposed action, and on reasonable alternatives. This notice formally announces the beginning of the scoping process and requests agency and public comments on the Entrega proposal. All scoping comments received will be considered during the preparation of the EIS. To ensure your comments are considered, please carefully follow the instructions in the *Public Participation* section of this notice.

Our independent analysis of Entrega's proposal will be included in a draft EIS. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list. A 45-day comment period will be allotted for review of the EIS. We will consider all timely comments and revise the document, as necessary, before issuing a final EIS.

The Entrega Gas Pipeline Project is in the preliminary design stage. At this time, specific routes and other details are being finalized and no formal application has been filed with the FERC. Entrega expects to file a formal application with the FERC by September 2004. Although we have no formal Certificate application, we are initiating our review of Entrega's planned project under our NEPA Pre-Filing Process. The purpose of the FERC's NEPA Pre-filing Process is to:

- Establish a framework for constructive discussion between the project proponents, potentially affected landowners, agencies, and the Commission staff;
- Encourage the early involvement of interested stakeholders to identify issues and study needs; and
- Attempt to resolve issues early, before an application is filed with the FERC.

We have already held early discussions with the U.S. Department of the Interior's Bureau of Land Management (BLM), which has agreed to assist us in the preparation of the EIS as a cooperating agency to satisfy its NEPA responsibilities. By this notice, we are asking other Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us, too. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. Please focus your comments on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before June 15, 2004, and carefully follow these instructions:

- (Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- (Label one copy of your comments for the attention of Gas Branch 1; and
- (Reference Docket No. PF04–7–000 on the original and both copies.

The public scoping meetings (*see* page 1 of this notice) are designed to provide another opportunity to offer comments on the planned project. Interested groups and individuals are encouraged to attend the meetings and present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meetings will be made so that your comments will be accurately recorded.

A docket number (PF04–7–000) has been established to place information filed by Entrega and related documents issued by the Commission, into the public record.[4] Once a formal

[2] A "hub" is a location where several pipelines owned by different companies are in proximity or cross one another.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices are being sent to all those receiving this notice in the mail.

[4] To view information in the docket, follow the instructions for using the eLibrary link in Availability of Additional Information, below.

application is filed, the Commission will:

- Publish a Notice of Application in the **Federal Register**;
- Establish a new docket number; and
- Set a deadline for interested persons to intervene in the proceeding.

Because the Commission's NEPA Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

The Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create a free account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

Route Inspection

From June 7–11, we will also be conducting an inspection of the route and locations of aboveground facilities associated with Entrega's planned project. This inspection will include both aerial and ground components. Anyone interested in participating in the inspection activities may contact the FERC's Office of External Affairs (identified below) for more details and must provide their own transportation.

Environmental Mailing List

If you wish to remain on our mailing list to receive any additional environmental notices and copies of the draft and final EIS, it is important that you return the Return Mailer (appendix 2) attached to this notice. If you do not return the mailer, you will be removed from our mailing list.

Availability of Additional Information

Additional information about the planned project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" (*i.e.*, PF04–7–000), and follow the instructions. Searches may also be done using the phrase "Entrega Gas Pipeline" in the "Text Search" field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY 202–502–8659, or at *FERCOnLineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

The Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

In addition, a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Entrega has initiated a Public Participation Plan to provide a means of communication for participating stakeholders. A toll-free number (1–866–305–3830) has been established for communicating with Entrega representatives regarding this project. Also, contacts and information requests can be made by e-mail to Entrega at *info@entregapipeline.com*. Finally, Entrega has established a Web site for this project. The Web site includes a list of public repositories along the planned route where all maps are available for inspection, along with applications filed with state and Federal agencies, among other useful information. Entrega's Web site is: *http://www.entregapipeline.com*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1038 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–60–004 and CP04–64–000]

Trunkline LNG Company, LLC and Trunkline Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Trunkline LNG and Loop Project and Request for Comments on Environmental Issues

April 30, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Trunkline LNG Company, LLC's (Trunkline LNG) Modified Expansion Project in Lake Charles, Calcasieu Parish, Louisiana, and the Trunkline Gas Company, LLC's (Trunkline Gas) Gas LNG Loop and Metering Facilities Project involving construction and operation of facilities in Beauregard, Jefferson Davis, and Calcasieu Parishes, Louisiana.[1] The facilities for these projects would consist of modifications to existing liquefied natural gas (LNG) facilities, about 22.2 miles of 30-inch-diameter pipeline loop, and associated facilities. We will refer to these two projects as the Trunkline LNG and Loop Project. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Trunkline LNG and Trunkline Gas provided to landowners. This fact

[1] Trunkline LNG's application was filed with the Commission under Section 3(a) of the Natural Gas Act and Part 157 of the Commission's regulations. Trunkline Gas's application was filed with the Commission under Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations.

sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Trunkline Gas wants to expand the capacity of its facilities in Louisiana to transport an additional 2.1 billion cubic feet per day for service to Trunkline Gas' customers.

In Docket No. CP02–60–004, Trunkline LNG proposes to:

- Convert an LNG vessel lay berth to a LNG ship unloading dock with three liquid unloading arms and one vapor return/delivery arm at the import terminal;
- Construct a desuperheater knockout drum;
- Construct three 200 million standard cubic feet per day (MMscf/d) second stage pumps;
- Construct four 150 MMscf/d submerged combustion vaporizers; and
- Construct an additional fuel gas heater.

In Docket No. CP04–64–000, Trunkline Gas seeks authority to:

- Construct 22.2 miles of 30-inch-diameter pipeline from the Trunkline LNG Import Terminal at milepost (MP) 0.0 to the Trunkline Gas Lakeside Pipeline Gate 203A (MP 22.2);
- Construct 0.6 mile of 30-inch-diameter pipeline inside the Trunkline LNG Import Terminal;
- Construct a new meter station facility at the existing Trunkline LNG Import Terminal for receipt of regassified LNG into the proposed loop;
- Construct four new meter facilities for interconnections with (1) Calcasieu Gas Gathering System (Calcasieu Gas) at MP 0.0 in Calcasieu Parish; (2) Sabine Gas Transmission Company (MP 8.1) in Calcasieu Parish; (3) Texas Gas Transmission Corporation (MP L–191.6)[2] in Jefferson Davis Parish; and (4) Tennessee Gas Pipeline Company (MP L–198.1) in Calcasieu Parish;
- Modify two existing meter stations on Trunkline's Lakeside Pipeline System to increase capacity at the Texas Eastern Transmission, LP's delivery point interconnection (MP L–203.9) to 500,000 decatherms per day (Dth/day) and Transcontinental Gas Pipe Line Corporation's (Transco) Ragley delivery point interconnection (MP L–203.4) to 500,000 Dth/day in Beauregard Parish, Louisiana.

[2] MP L—is the milepost designation for the existing 30-inch-diameter LNG Lateral, which is part of Trunkline Gas' Lakeside Pipeline System.

The location of the project facilities is shown in appendix 1.[3]

Nonjurisdictional Facilities

Nonjurisdictional facilities that would be built as a result of the proposed project are limited to taps and connecting piping that may be installed by Calcasieu Gas to connect the meter station facilities to its pipeline.

Land Requirements for Construction

The portion of the project in Docket No. CP02–60–004 would affect a total of 35.3 acres of the existing terminal site: 23.1 acres of grass cover, 9.5 acres covered in asphalt, concrete, or gravel, and 2.7 acres of water. Following construction, there would be 20.9 acres of grassed areas and 11.7 acres of asphalt, concrete, or gravel covered area. Of the 2.7 acres of water affected by construction, slightly less than 2.7 acres of water would remain after construction.

In Docket No. CP04–64–000, construction of the proposed pipeline and related facilities would disturb about 317.9 acres of land. Following construction, about 131.3 acres would be maintained as new pipeline right-of-way or aboveground facility sites. The remaining 186.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided for the project. This preliminary list of issues may be changed based on your comments and our analysis.

- Air and noise quality issues.
- Marine traffic issues.
- One federally listed endangered or threatened species may occur in the project area.
- Cultural resources may be affected in the project area.
- 42 waterbodies would be crossed.
- 3.3 acres of wetlands would be affected.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the projects. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP02–60–004/CP04–64–000.
- Mail your comments so that they will be received in Washington, DC on or before June 1, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

The Commission staff will conduct a field trip on portions of the pipeline facilities on May 19, 2004. Anyone interested in participating in the field trip may attend, but they must provide their own transportation. The Commission staff will start the field trip on Wednesday, May 19, 2004, at approximately 8:30 a.m. in the parking lot of the following hotel: Best Suites of America, 401 Lakeshore Drive, Lake Charles, LA 70601, Telephone: (337) 439–2444.

In addition, the Commission staff will hold a scoping meeting for the project on May 19, 2004, at 7 p.m. at the following address: Holiday Inn Express, 102 Mallard Street, Sulphur, Louisiana 70665 Telephone: (337) 625–2500.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the projects is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCONLINESUPPORT@FERC.GOV*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1046 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

April 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to remove project lands from the project boundary.

b. *Project No:* 2323–140.

c. *Date Filed:* April 7, 2004.

d. *Applicant:* USGen New England, Inc.

e. *Name of Project:* Deerfield River Project.

f. *Location:* The project is located on the Deerfield River in Windham and Bennington Counties, Vermont and Franklin and Berkshire Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John Ragonese, FERC License Manager, USGen New England Inc., 4 Park Street, Concord, NH 03301, (603) 225–5528.

i. *FERC Contact:* Any questions on this notice should be addressed to

Robert Shaffer at (202) 502–8944, or e-mail address: *Robert.Shaffer@ferc.gov.*

j. *Deadline for filing comments and or motions:* June 1, 2004.

k. *Description of Request:* USGen New England Inc. (USGen) is seeking Commission authorization to sell a 0.6-acre parcel which includes the Shelburne Office Building and limited parking to the Town of Buckland for its municipal offices. The building is eligible for listing on the National Historic Registry.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,*18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1043 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 2743–045.

c. *Date Filed:* March 30, 2004.

d. *Applicant:* The Four Dam Pool Power Agency.

e. *Name of Project:* Terror Lake Hydroelectric Project.

f. *Location:* The project is located on the Kizhuyak River, in Kodiak Island Borough, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Stan Sieczkowski, Operations Manager, The Four Dam Pool Power Agency, 703 West Tudor Road, Suite 102, Anchorage, AK 99503, (907) 258–2281, (907) 258–2287 (Fax).

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments and or motions:* June 1, 2004.

k. *Description of Request:* The Four Dam Pool Power Agency, (Four Dam) licensee filed a license amendment application to modify the lower tailrace area and to revise the project boundary. Four Dam is requesting the amendment to construct new hard berms along the lower tailrace and left bank of the Kizhuyak River to replace an old berm that was placed during original project construction. In addition, the Four Dam proposes to realign and lengthen the lower end of the project tailrace by 120 feet outside of the project boundary. Consequently, Four Dam proposes to amend the authorized project boundary to include an additional 18 acres of land, owned by the Kodiak Island Borough.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS",

"RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1044 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–34–000]

Columbia Gas Transmission Corporation; Notice of Site Visit

April 30, 2004.

On May 11, 2004, the staff of the Office of Energy Projects and representatives of Columbia Gas Transmission Corporation (Columbia) will conduct a site visit of the proposed Line 1278 Replacement Project in Pike, Northampton, and Monroe Counties, Pennsylvania.

All interested parties may attend. Those planning to attend must provide their own transportation. Interested parties can meet staff at 8 a.m. on May 11, 2004, in the parking lot of the Hampton Inn, 114 South 8th St., Stroudsburg, Pennsylvania.

For further information, please contact the Office of External Affairs toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1042 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Notice of Electric Quarterly Reports Western Outreach Session

April 30, 2004.

On Monday, May 17, 2004, FERC Electric Quarterly Reports (EQR) staff will hold an EQR Outreach Session for western filers in conjunction with a May 18, 2004, EQR Working Group meeting hosted by the California Independent System Operator Corporation (CAISO). The FERC EQR Outreach Session will be held at the Lake Natoma Inn, 702 Gold Lake Drive, Folsom, California, and will run from 1 p.m. to 5 p.m. Barbara Bourque (EQR Program Manager), Steven Reich, and Mark Blazejowski will discuss ISO data mapping issues and address any other EQR questions or problems that filers have. Interested individuals should bring someone from their company who is familiar with the CAISO operations and settlement statements.

Those who would like to participate in the Monday EQR Outreach Session are asked to register online at FERC by 11 a.m. Pacific Time on Thursday, May 13, 2004, at *http://www.ferc.gov/whats-new/registration/eqr-0517-form.asp.* There is no registration fee. Questions and comments may be submitted in advance by filing them in Docket No. ER02–2001 as described below, or by e-mailing *eqr@ferc.gov.* Registration for Tuesday's (May 18, 2004) EQR Working Group meeting hosted by CAISO will be handled by the ISO. Further information about the EQR Working Group Meeting, which will run from 8 a.m. to 4:30 p.m. on May 18, 2004, at the CAISO headquarters, can be found at *http://www.caiso.com/meetings/docs/04051718fercmeetings.pdf.*

Interested parties wishing to file comments may do so under the above-captioned Docket Number. Those filings will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

For additional information, please contact Mark Blazejowski of FERC's Office of Market Oversight and Investigations at (202) 502–6055 or by e-mail, *mark.blazejowski@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–1036 Filed 5–7–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 24, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marantz Investment, L.P., Springfield, Illinois, Tom E. Marantz, Springfield, Ilinois, Natalie K. Marantz, Springfield, Illinois, Marla J. Marantz, Springfield, Missouri, Melissa J. Hayner, Springfield, Illinois, Tom E. Marantz as Trustee for the Marla Marantz Trust, Tom E. Marantz as Trustee for the Tom Marantz Trust, Marla J. Marantz as Trustee for the Marla Marantz Irrevocable Trust, Gregory R. Marantz, Springfield, Illinois, Jennifer A. Marantz, Springfield, Illinois, and Elizabeth M. Saltzman, Springfield, Missouri, to retain voting shares of Spring Bancorp, Inc., Springfield, Illinois, and thereby indirectly control Bank of Springfield, Springfield, Illinois, and Bank of Jacksonville, Jacksonville, Illinois.

Board of Governors of the Federal Reserve System, May 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–10509 Filed 5–7–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. NSB Holdings, Inc., Macon, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of New Southern Bank, Macon, Georgia.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Koss–Winn Bancshares, Inc., Employee Stock Ownership Plan with 401(K) Provisions, Buffalo Center, Iowa; to acquire additional voting shares of Koss–Winn Bancshares, Inc., Buffalo Center, Iowa, and thereby indirectly acquire voting shares of Farmers Trust & Savings Bank, Buffalo Center, Iowa.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin; to acquire 100 percent of the voting shares of First State Bank, Fountain City, Wisconsin.

D. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Centennial C Corp, Rancho Santa Fe, California; to become a bank holding company by acquiring 100 percent of the voting shares of Centennial Bank Holdings, Inc., Fort Collins, Colorado, and Centennial Bank of the West, Fort Collins, Colorado.

Board of Governors of the Federal Reserve System, May 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–10510 Filed 5–7–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Meeting

TIME AND DATE: 9 a.m. (PDT), May 17, 2004.

PLACE: Barclays Global Investors, 34th Floor Main Board Room, 45 Fremont Street, San Francisco, CA 94105.

STATUS: Parts will be open to the public and parts closed to the public.

Matters To Be Considered

Parts Open to the Public

1. Approval of the minutes of the April 19, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

Parts Closed to the Public

3. Personnel matters.
4. Procurement issues.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 6, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–10659 Filed 5–6–04; 12:43 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04110]

Addressing Emerging Infectious Diseases in Bangladesh; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to strengthen the capacity in Bangladesh to detect and evaluate emerging infectious diseases and to evaluate new vaccines and other interventions that may offer approaches toward their prevention. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the International Centre for Diarrhoeal Disease Research, Bangladesh (ICDDR,B). Eligibility is limited to ICDDR,B because:

- Activities to be supported under this program include both new projects and follow-on of projects previously conducted at ICDDR,B that are dependent upon established ICDDR,B surveillance systems in special populations in Bangladesh, including in an urban slum area (Kamalapur), rural sites (Abhoynagar and Mirsarai), and a network of hospitals and health centers. No other organization has access to these surveillance systems and so only ICDDR,B can conduct the activities.
- ICDDR,B is the only known institution in Bangladesh which possesses the scientific and management capability to meet program requirements without jeopardizing or compromising the quality of the research and other activities. ICDDR,B was established in 1978 and includes a mix of national and international staff, including public health scientists, laboratory scientists, clinicians, epidemiologists, information technology professionals, and experts in emerging infectious diseases and vaccine sciences, etc. ICDDR,B collaborates with the Bangladesh Ministry of Health, universities, community groups, private industry, U.S. governmental institutions (e.g., USAID), governments of other countries, and others to study and address infectious disease health problems in Bangladesh and the surrounding region, leading to solutions that can be applied in developing countries worldwide.

• ICDDR,B offers special opportunities for furthering research, surveillance, and prevention and control programs in Bangladesh through the use of unusual talent resources and access to established unique study populations in areas with appropriate environmental conditions for studying the diseases of interest in this program. ICDDR,B has established multiple field sites and surveillance systems in Bangladesh that are critical for carrying out research and other activities addressing emerging infectious diseases.

• ICDDR,B is conveniently located in Dhaka and has adequate space, including office space, laboratories, meeting space, and capacity to expand to accommodate additional staff.

• ICDDR,B has a multiple project assurance, has mechanisms in place for local ethical review of research proposals (for multi-site studies), and has a recognized Institutional Review Board. This further defines their knowledge and capabilities in research.

C. Funding

Approximately $250,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before August 1, 2004 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone 770–488–2700.

For technical questions about this program, contact: Greg Jones, Extramural Project Officer, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop C–19, Telephone: 404–639–4180, E-mail: *gjj1@cdc.gov*.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10537 Filed 5–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

BECAUSE Kids Count! (Building and Enhancing Community Alliances United for Safety and Empowerment)

Announcement Type: New.
Funding Opportunity Number: 04142.
Catalog of Federal Domestic Assistance Number: 93.136.
Key Dates:
Letter of Intent Deadline: May 25, 2004.
Application Deadline: July 9, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b(k)(2).

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 cooperative agreement funds to build or expand the capacity of national organizations and their state, local, regional and/or tribal affiliates to address the prevention of child maltreatment, which includes physical abuse, emotional abuse, neglect, and sexual abuse. Research suggests that these areas of violence have risk and protective factors across multiple domains of influence as represented by the ecological model presented in the World Report on Violence and Health (Krug *et al.*, 2002) including individual, relationship, community and societal levels. Violence prevention efforts in child maltreatment include activities that are aimed at addressing the individual, relationship, community and societal factors of potential victims, perpetrators and bystanders.

The specific purposes of this funding are to:

1. Provide an opportunity for national organizations to expand their leadership role in addressing the prevention of child maltreatment by disseminating the key concepts of prevention, evaluation, and the ecological model, models for community assessment and action, and evidence-based prevention strategies within their own organizations. An emphasis will be placed on preventing child maltreatment before it occurs.

2. Foster effective collaborations within the organizations and their affiliates to respond to emerging policy and program issues related to the prevention of child maltreatment.

3. Conduct organizational assessments of infrastructure capabilities, staff and structural capacities, organizational definitions, understandings, and applications of prevention principles and key concepts. The assessments should also determine organizational readiness for dissemination of child maltreatment prevention concepts and strategies, and organizational barriers and facilitators, with an emphasis on preventing child maltreatment before it ever occurs.

4. Develop a prevention plan based upon information obtained from the organizational assessments, as well as an inventory of initiatives and a review of organizational data related to the prevention of child maltreatment. The plan for future activities should have an emphasis on preventing child maltreatment before it occurs.

This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

For the purposes of this program announcement the following definitions apply:

Child maltreatment: "Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power" (Report of the Consultation on Child Abuse Prevention, 29–31 March 1999, WHO, Geneva. Geneva, World Health Organization (WHO), 1999 (document WHO/HSC/PVI/99.1)).

Prevention: Individual, relationship or family, community, and/or environmental/system level strategies, policies and actions that prevent violence from initially occurring. Prevention efforts work to modify and/or entirely eliminate the event, conditions, situations, or exposure to influences (risk factors) that result in the initiation of violence and associated injuries, disabilities, and deaths. Additionally, prevention efforts seek to identify and enhance protective factors that may prevent violence not only in at-risk populations but also in the community at large. Prevention efforts for child maltreatment include activities that are aimed at addressing the individual, relationship, community and societal factors that influence potential perpetrators, victims, and bystanders.

Intervention: Services, policies and actions provided after child maltreatment has occurred.

Activities: Awardee activities for this program are as follows:

1. Develop, expand, and/or maintain a child maltreatment prevention Work Group comprised of persons with expertise and experience in the areas of child maltreatment, child health, and child well-being, including public health. This group will:

a. Provide consultation to the awardee and assist in guiding planning efforts.

b. Assist in identifying organizational prevention programs and data sources.

c. Assist in the development of a prevention plan (as defined by this announcement). This plan should guide the organization's efforts to address the prevention of child maltreatment or one or more specific components of child maltreatment, such as physical abuse, emotional abuse, neglect, and/or sexual abuse.

d. Seek support and resources to implement the strategies and recommendations detailed in the prevention plan.

2. Review existing data and conduct an inventory of initiatives within the organization and its affiliates related to the prevention of child maltreatment. This should be done in conjunction with CDC:

a. Develop and conduct an organizational inventory of child maltreatment prevention programs; at minimum, the inventory should include the number of programs, intended audience, content, and resources devoted to the programs.

b. Compile a report on organizational policies and research activities focused on the prevention of child maltreatment.

c. Review existing organizational data related to the prevention of child maltreatment.

d. Prepare a report summarizing the findings from 2a, 2b, and 2c. Include plans for using these data to inform the prevention-planning document described below in number four.

3. Conduct assessments, using available guidance and direction from CDC, to determine the level of organizational commitment, interest and readiness to fully engage in efforts to prevent child maltreatment.

a. Assess the status of the organization and its affiliates with regard to carrying out activities that support the purposes of this program and their needs for training, technical assistance, materials, and other resources.

b. Conduct an organization-wide assessment of readiness for dissemination of child maltreatment prevention concepts and strategies.

4. Develop a prevention plan that will guide the organization's efforts to prevent child maltreatment, or one or more components of child maltreatment, such as physical abuse, emotional abuse, neglect, and/or sexual abuse. The plan should address global risk and protective factors, and identify strategies to address the complex ecological factors that influence violence. Specifically, the plan must provide strategies that address individual, relationship, community, and societal factors. In addition, the prevention plan should include a logic model and time-phased implementation strategies.

5. Identify strategies that will provide support for sustaining and enhancing future prevention activities by addressing the following: (1) Ongoing collaboration and community involvement; (2) Ongoing commitment; (3) Ongoing communication; (4) Evaluation; and (5) Other issues associated with the selected topic area.

6. Launch the national organization's child maltreatment prevention plan.

7. Collaborate with CDC and other awardees on an ongoing basis to ensure consensus and uniformity related to core measures, tools, and processes, through conference calls and traveling to required awardee meetings, including training sessions, evaluation meetings, and project updates.

8. Submit required reports to CDC as scheduled.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide updated information related to the purposes and activities of this program announcement.

2. Provide technical assistance and consultation in the development, implementation, and evaluation of assessment instruments and the organization's plan to prevent child maltreatment, including program objectives and performance measures.

3. Coordinate information sharing among relevant CDC awardees and partners to ensure consensus and uniformity related to core measures, tools, and processes.

4. Provide assistance with program planning to assure consistency with program goals for capacity building, including the use of logic models and other public health tools and resources.

5. Collaborate with awardees to plan and implement partner meetings, conferences, and trainings to provide forums through which awardees can increase their knowledge and skills, learn from each other, share resources, and work collaboratively to address issues related to child maltreatment prevention.

6. Participate in the Work Group's strategic planning meetings.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $600,000.

Approximate Number of Awards: Three.

Approximate Average Award: $200,000.

Floor of Award Range: $150,000.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants are national organizations that are non-profit and non-governmental, including national faith-based organizations, that work in the area of child maltreatment (*i.e.*, physical abuse, emotional abuse, neglect, and/or sexual abuse). Eligible applicants must have state, local, regional, and/or tribal affiliates and provide support to these affiliates.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

- Effective and well-defined working relationships between the national organization and its affiliates, as well as entities outside the national organization, which will ensure implementation of proposed activities.
- The requested funding amount should not be greater than the ceiling amount of $200,000.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Forms are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

Pre-Application Conference Call: For interested applicants, one pre-application technical assistance call will be conducted. The call will be held for one hour. The conference call name is BECAUSE Kids Count! The call date and time is May 24, 2004, at 9:30 a.m. Eastern time. Call USA toll free (888) 528–9061. The leader will be Ms. Pat Bender. The pass code is 15033. For security reasons, the pass code and the leader's name will be required to join the call.

IV.2. Content and Form of Submission

Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: two
- Font size: 12-point unreduced
- Paper size: 8.5 by 11 inches
- Single spaced
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Number and title of this Program Announcement
- Brief description of your organization including the component(s) of child maltreatment that your organization addresses
- Number of affiliates
- Organizational structure
- Requirements for affiliation

Application

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first 25 pages of the application which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way (*e.g.*, do not use staples).

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Abstract (one-page summary of the application, does not count towards page limit)
- Relevant Experience
- Work Plan
- Collaboration
- Capacity and Staffing
- Evaluation
- Measures of Effectiveness
- Proposed Budget and Justification (does not count towards page limit)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes
- Job Descriptions
- Resumes
- Organizational Charts
- Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 23, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 23, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Application

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: Cooperative agreement funds for this project cannot be used for construction, renovation, the lease of passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If

your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Margaret Brome, Project Officer, 2939 Flowers Road South, Atlanta, GA 30341, Telephone: 770–488–1721, Number: 770–488–1360, E-mail: *MBrome@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04142, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Relevant Experience (30 Points)

a. Does the applicant demonstrate experience coordinating, collaborating and providing leadership with regard to child maltreatment or a specific component of child maltreatment, such as physical abuse, emotional abuse, neglect, or sexual abuse?

b. Does the applicant demonstrate experience managing a work group?

c. Does the applicant demonstrate experience in collecting and using organizational assessment data? Does the applicant have experience using data to determine organizational priorities?

d. Does the applicant demonstrate experience identifying and prioritizing violence-related strategies, especially in the field of child maltreatment or in a specific component of child maltreatment?

e. Does the applicant demonstrate experience developing strategic plans?

2. Work Plan (30 Points)

a. Does the applicant include a detailed work plan, including a time-line for the first year?

b. Does the applicant provide clearly stated goals and corresponding objectives that are specific, measurable, attainable, realistic and time-phased?

c. Does the applicant provide details about how the inventory of initiatives and review of data related to the prevention of child maltreatment within the organization and its affiliates will be achieved? Does the applicant describe how the assessments of the needs of the organization and its affiliates will be conducted relative to training, technical assistance, materials, and other resources? Does the applicant describe how it will assess the readiness of the organization and its affiliates to disseminate child maltreatment prevention concepts and strategies?

d. Does the applicant describe how the inventory and assessments will be integrated into the organization's prevention plan for child maltreatment?

e. Does the applicant describe how the prevention plan will be developed? Does the applicant provide details about what strategies will be used to obtain support for the prevention plan within the organization and its affiliates?

f. Does the applicant indicate a willingness to embrace prevention concepts, that is preventing initial perpetration? Does the applicant incorporate strategies that are aimed at addressing individual, relationship, community and societal factors, which are elements of the ecological model?

3. Collaboration (20 Points)

a. Does the applicant describe the composition, role and involvement of the Work Group, and identify or propose participants representing a broad range of disciplines that work in the areas of child maltreatment, child health, and child well being, including public health?

b. Does the applicant demonstrate a willingness to collaborate with CDC in the assessment and prevention planning activities? Does the applicant demonstrate a willingness to collaborate with relevant CDC awardees and partners? Does the applicant demonstrate a willingness to work with CDC and the other awardees to reach consensus and uniformity in selecting core measures, tools, and processes?

c. Does the applicant demonstrate a successful history of collaborating effectively with other organizations? Does the applicant include letters of support and/or memoranda of agreement from organizations, research and/or academic experts/institutions, and other agencies and organizations, including public health agencies and organizations that work with children?

d. Does the applicant demonstrate a clear plan for involving state, local, regional, and/or tribal affiliates in the assessment and planning processes?

4. Capacity and Staffing (10 Points)

a. Does the applicant demonstrate existing capacity, infrastructure, and evidence of leadership to carry out the required activities? Does the applicant demonstrate an ability to effectively manage and implement the required activities?

b. Does the applicant describe the responsibilities of individual staff members, including their level of effort and allocation of time?

c. Does the applicant describe project staff and their relevant skills and expertise for their assigned tasks relative to this announcement?

d. Does the applicant include an organizational chart?

5. Evaluation (10 Points)

a. Does the applicant provide a detailed description of the methods to be used to evaluate the project?

b. Does the applicant demonstrate a willingness to collaborate with CDC and other awardees in the development of a logic model?

6. Measures of Effectiveness (Not Scored)

Does the applicant provide objective/quantifiable measures regarding the intended outcomes that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement?

7. Proposed Budget and Justification (Not Scored)

Does the applicant provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in the program announcement? Details must include a breakdown in the categories of personnel (with time allocations for each), staff travel, communications and postage, equipment, supplies, and any other costs? Does the budget projection include a narrative justification for all requested costs? Any sources of additional funding beyond the amount stipulated in this cooperative agreement should be indicated, including donated time or services. For each expense category, the budget should indicate CDC share, the applicant share and any

other support. These funds should not be used to supplant existing efforts.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCIPC. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

A Special Emphasis Panel will evaluate your application according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement and Award Date

August 15, 2004

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Parts 74 or 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Margaret Brome, Project Officer, 4770 Buford Hwy., NE, MS-K60, Atlanta, GA 30341–3724, Telephone: 770–488–1721, E-mail: *MBrome@cdc.gov.*

For financial, grants management, or budget assistance, contact: Angie Tuttle, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341, Telephone: 770–488–2719, E-mail: *Angie.Nation@cdc.hhs.gov.*

Dated: May 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10533 Filed 5–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04147]

First National Congress on Public Health Preparedness; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program for convening a meeting of leaders in medicine and public health to exchange critical information and discuss successful programs for ensuring public health readiness for terrorism events or other emergencies. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to University of Georgia Center for Leadership in Education and Applied Research in Mass Destruction Defense (CLEARMADD). The University of Georgia (UGA) CLEARMADD is currently working with the Centers for Disease Control and Prevention (CDC), the Medical College of Georgia (MCG), the American Medical Association (AMA), and other academic centers who are developing curricula for health professionals regarding weapons of mass destruction (WMD). This multi-organizational collaboration was developed to ensure coordinated training for medical and public health professionals. The original cooperative agreement number with UGA is U90/CCU421862. The cooperative agreement was legislatively earmarked, in FY2002, and the House of Representatives Conference Report accompanying the Department of Labor, Health and Human Services, Education, and related agencies Appropriations Bill ending September 30, 2002 recognized UGA's unique qualifications in conducting the activities associated with this cooperative agreement. Consistent with the activities of the congressionally earmarked cooperative agreement, the UGA, is uniquely qualified for the proposed activity in convening a forum of medical and public health professionals. The UGA has an internationally recognized research program at Chernobyl and more than 50 years of continuous research experience at Georgia's Savannah River site which has established UGA as a national academic leader in environmental

radioactivity. The UGA has already collaborated with the AMA through the MCG and with other academic centers for public health preparedness in developing national standards for frontline clinicians through the Basic Disaster Life Support (BDLS) and the Advanced Disaster Life Support (ADLS) training curricula. UGA has become a national leader in coordinating efforts to upgrade medical readiness of medical and public health professionals and is a CDC Specialty Center for Public Health Preparedness. UGA has conducted extensive collaborations with other academic medical centers, including the Medical College of Georgia, the University of Texas Southwestern Medical Center, Dallas and the University of Texas at Houston, as well as the American Medical Association, in their ongoing work to develop programs to bridge public health and clinical medicine. UGA has a recognized track record on teaching and research in toxicology, the environmental effects of radioactivity on human and ecosystem health, public policy regarding terrorism preparedness and response, and related distance learning. The past experience of UGA, ongoing association with AMA, its unique collaborations in the past and for this activity, and the training protocols already in development, make UGA unique in recommending UGA for single eligibility for this award.

C. Funding

Approximately $1,000,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before March 15, 2004, and will be made for a 12-month budget period within a project period of up to one year. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Lynn Steele, Senior Advisor, Education and Training, CDC, Office of the Director, Office of Terrorism, Preparedness and Emergency Response, 1600 Clifton Road, Mailstop D–44, Atlanta, GA 30333, Telephone: 404–639–7142.

Dated: May 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10534 Filed 5–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04132]

Organ Transplant Infection Detection and Prevention Program

Announcement Type: New.

Funding Opportunity Number: 04132.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent Deadline: May 25, 2004.

Application Deadline: June 24, 2004.

Executive Summary: The Organ Transplant Infection Detection and Prevention (OTIP) Program will rapidly assess the public health impact of new infection prevention programs in organ transplant recipients through a program of sentinel surveillance, applied research and collaborative prevention studies. Such assessments would be the basis for national prevention programs to eliminate or minimize invasive fungal disease and related mortality in this population. In addition, the program would create a repository of clinically relevant isolates and specimens with relevant patient information from which applied research can further scientific knowledge regarding novel diagnostics and emerging antimicrobial resistance.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act, section 317(k)(2) [42 U.S.C. 247b(k)(2)].

Purpose

The purpose of the OTIP Program is to support organ transplant centers participating in existing surveillance or research networks to develop a consortium of centers of excellence in surveillance, infection prevention, and applied public health research involving solid organ and stem-cell transplant recipients. The OTIP should be designed to develop, implement, and evaluate effectiveness of epidemiologic-based strategies to reduce infectious outcomes among organ-transplant recipients. Examples of existing networks include The Centers for Disease Control and Prevention (CDC) Program of Surveillance for Invasive Fungal Infections in Transplant Recipients (TransNet), CDC's Prevention Epicenter Program, and National Marrow Donor Program's Infection Pilot Project.

The goals of the OTIP program are: (1) Support activities at participating transplant centers for enhanced surveillance for fungal infections during the post-transplant period, using similar methods and intensity of case-ascertainment, with development of valid, useful, simple surveillance methods for exportation to non-program transplant centers; (2) support activities at participating transplant centers related to epidemiologic assessments and improved descriptions of established infectious syndromes through a repository of clinical samples (*e.g.*, serial serum, bronchial-alveolar lavage) and identification of novel risk factors for disease (*e.g.*, role of home environment in late onset aspergillosis); and (3) be a national resource for assessing effectiveness of new infection prevention strategies in this population. As invasive fungal infections represent the highest infection-related mortality in this population, initial activities should focus exclusively on these pathogens; other pathogens may be incorporated into later years of the program.

This program addresses the "Healthy People 2010" focus area(s) of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the Internet site: *http://www.health.gov/healthypeople.*

Measurable outcomes of the program will be in alignment with the performance goal for the National Center for Infectious Diseases (NCID): To protect Americans from infectious diseases by planning, directing, and coordinating a national program to improve the identification, investigation, diagnosis, prevention, and control of infectious diseases in the United States and throughout the world.

Research Objectives

Roughly 18,000 bone marrow/stem cell transplants (SCCs) and over 23,000 solid organ transplants (SOTs) are performed annually within the U.S. Approximately 10–15 percent of recipients will develop an invasive fungal infection post-transplant. In this population, the mortality of invasive aspergillosis can exceed 90 percent; the mortality of invasive candidiasis is approximately 40 percent. The OTIP Program will provide the foundation for applied research designed to fulfill current gaps in scientific knowledge regarding surveillance and prevention of invasive fungal infections in the post-transplant period. Such knowledge

includes identification of an efficient and valid surveillance methodology, understanding the utility of novel diagnostics used to detect fungal, bacterial, or viral pathogens, and identification of modifiable risk factors for disease and effective prevention tools. In order to gain this knowledge, the objectives of the OTIP Program should: (1) Identify and validate efficient surveillance methodology exportable to non-program centers; (2) identify modifiable environmental or other factors extrinsic to the transplant patient (*e.g.*, device-specific factors, environmental exposures) which can be addressed to prevent infectious diseases in the post-transplant period; (3) describe the pathogen and infection characteristics of common infections among patients in the post-transplant period; and (4) through knowledge gained from (1)–(3), demonstrate the efficacy of novel prevention measures in reducing post-transplant infectious complications and associated mortality. The types of experimental approaches that may be used to achieve the goals of the program include: development of the "gold standard" approach to surveillance for invasive fungal infections in the post-transplant population and validate efficacy of an exportable surveillance methodology; prospective case-control studies for common invasive fungal infections, such as late-onset aspergillosis, including targeted environmental sampling; establishment of a serum, urine, and/or bronchial-alveolar lavage specimen repository for determining effectiveness of novel diagnostics for infections (*e.g.*, fungal, viral); and using risk-adjusted infection-related outcomes, ascertain the effectiveness of novel prevention program in reducing disease (prophylaxis strategies, educational interventions). Because organ-transplant patients are at risk for prolonged periods post-transplant (*i.e.*, several years), these activities must be conducted within a specialized network of collaborating centers capable of long-term continuity of care of these patients (*i.e.*, over one year). The operational organization of The OTIP Program must include two or more consortiums of two to four transplant centers with sufficient infrastructure (*e.g.*, surveillance staff and laboratory support) supported by the consortium leaders to accomplish the objectives.

Activities

Awardee activities for this program are as follows:

1. Establish a consortium of at least two solid-organ and/or stem-cell transplant centers consistent with the purpose of the OTIP Program.

2. Collaborate with other OTIP Program sites and CDC to operate as the OTIP Program, and facilitate and oversee implementation of core activities (*e.g.*, activities to be done at all centers participating in the OTIP Program). This includes providing resources to investigators at centers participating in the applicant's consortium to support OTIP Program activities. Activities may be prioritized and time-phased. Core activities include:

a. Perform "gold standard" surveillance for invasive fungal infections incorporating the following elements:

i. Active-surveillance using standardized diagnostic evaluations and follow-up of patients among participating sites (*e.g.*, proper training of surveillance personnel, collection and evaluation of fungal isolates).

ii. Design and maintain an aggregate database (*e.g.*, standardized protocol) recording both events and relevant patient data from all organ-transplant recipients to maintain a valid risk-adjusted surveillance system among all transplant sites.

iii. Optionally, include time-phased plans to incorporate other infectious outcomes.

iv. Optionally, include time-phased plans to explore utility of electronic capture of data elements and/or utilization of other existing data systems related to transplant recipients.

b. Epidemiologic assessments to identify modifiable risk factors, focusing on those extrinsic to the patient, for invasive fungal disease in the post-transplant period.

c. Development of a repository of clinical samples and relevant clinical data for assessment of novel diagnostics or pathogen discovery, and outline plans to facilitate making isolates available to a wider public health research community.

d. Develop plans and implement OTIP Network study to assess novel prevention strategies based on (a)–(c) above.

3. Participate in management, analysis, and interpretation data, publish and disseminate important medical and public health information stemming from OTIP Program activities in collaboration with all OTIP Program sites.

4. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. The CDC Staff will have substantial scientific-programmatic involvement during the conduct of these activities, through technical assistance, advice and coordination above and beyond normal program stewardship for grants, including participation in data collection, analysis, interpretation of data, and presentation of research findings.

2. The CDC Staff will facilitate operations of the program through maintenance of a Steering Committee, and coordinate the dissemination of information to Principal Investigators and others.

3. As requested, will serve as a reference laboratory and receive, process, store, and perform evaluation of clinical (*e.g.*, serum repository) or environmental specimens, perform molecular epidemiologic studies, evaluate novel diagnostics, perform confirmatory testing and/or susceptibility testing on fungal isolates obtained in OTIP projects.

4. As requested, serve as a resource for and support data management, biostatistical and epidemiologic analysis.

5. Assist in the development of surveillance and research protocols for IRB review by all cooperating institutions participating in the research project, as well as CDC approval.

Collaborative Activities for the Program are as follows:

1. Timing, protocol development, and implementation strategy of core activities of the OTIP Program will be decided by Steering Committee consisting of Principal Investigators of each OTIP Program cooperative agreement, CDC, and other select representatives (*e.g.*, participating transplant centers, professional society). The purpose of the Steering Committee is to share scientific information, assess scientific progress, identify new research opportunities, and decide on major aspects of program operations. Decisions will be made by a majority vote of a quorum, with an attempt for consensus when possible. The Steering Committee will convene through both telephone conference and in person.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $350,000.

Approximate Number of Awards: One to two.

Approximate Average Award: $175,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: August 30, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Research institutions
- Hospitals

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Other eligibility requirements include: (1) Identification of consortium of transplant centers which in aggregate perform on average 1000 transplants per year and may include a combination of solid-organ and stem-cell transplants; (2) appropriate diagnostic evaluations are performed on patients post-transplant to ascertain etiology of the illness post-transplantation; (3) participating centers have capacity to perform intensive surveillance, epidemiologic assessments, and facilities to ensure efficient processing of patient specimens. Documentation of eligibility can be accomplished by including the following: (1) Infection control or other surveillance data (*e.g.*, from sites currently participating in surveillance networks) from applicants and proposed collaborating sites describing total number of transplants, type of transplants, and percent of transplant patients developing invasive fungal infections; (2) outline of current practice in documenting etiology of post-transplant illness in this population; and (3) a bulleted list of titles of at least one, but no more than five, current or recent epidemiologic and/or prevention research projects or studies undertaken from each proposed collaborating sites (*e.g.*, part of quality improvement projects, infection control, multi-site or single-site epidemiologic studies).

The limitation on eligibility is justified by the essential need to have sufficient numbers of transplanted individuals and sufficient disease incidence to adequately perform studies to achieve objectives of the OTIP Program. In addition, centers must currently practice a standard of care that will maximize identification of infecting pathogens in this population. Finally, demonstration of past performance in conducting epidemiologic investigation and prevention research will ensure applicants ability to perform objectives.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: One
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, e-mail address, and telephone number of the Principal Investigator
- Names of other key personnel
- Number and title of this Program Announcement (PA)

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See: *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets.

Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: May 25, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 21, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: a separate budget should be included for each proposed collaborating center. Within each budget, include line items, if appropriate, for specific funds addressing each respective recipient activity. Funds requested related to activities that are time-specific (*e.g.*, risk factor study in year 2–3, adding repository of clinical specimens in year 2, adding food borne pathogen surveillance in year 3) should appear as line items in the appropriate years only. Cost for semi-annual steering group meetings, training sessions, or related travel/meeting expenses should be separated from other travel.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Barbara Stewart, Public Health Analyst, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Rd., MS C19, Atlanta, GA 30333, (404) 639–0044, (404) 639–2469, *bstewart@cdc.gov.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04132, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the selection of transplant centers participating in the consortium allow for sufficient diversity or number of transplants to ensure success of the program? Are any unique features of the consortium that ensure success with the multi-site nature of the activities? If transplants of only a limited type (*e.g.*, stem-cell only) are represented by the applicant's consortium, will such a homogenous patient mix result in improved scientific productivity and ability to accomplish objectives of the OTIP Program to justify the approach?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Does the proposed consortium of transplant centers build on any existing surveillance and public health research infrastructure to ensure success?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

1. Program priorities include activities focused on invasive fungal infections. Bacterial and Viral pathogens should be phased in over time if funding becomes available.

2. Proposed transplant centers participating in consortium should maximize use of scarce resources (*e.g.*, utilizing same surveillance personnel for both stem-cell and solid-organ transplant patients if both transplant populations are participating, incorporation of some activities into routine infection control activities).

3. Degree of commitment expressed in letters of support from all essential personnel or departments from proposed transplant centers to be in consortium (*e.g.*, infection control, clinical microbiology, transplantation division).

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by NCID. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NCID in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review by the Mycotic Diseases Branch.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–3 Animal Subjects Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Dr. Mary Lerchen, Extramural Program Official, CDC, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop: C–19, Atlanta, GA 30333, Telephone: 404–639–0043, E-mail: *mlerchen@cdc.gov*.

For questions about peer review, contact: Barbara Stewart, CDC, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop: C–19, Atlanta, GA 30333, Telephone: 404–639–0044, E-mail: *bstewart@cdc.gov*.

For financial, grants management, or budget assistance, contact:

Sharon Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone:770–488–2748, E-mail: *sqr2@cdc.gov*.

VIII. Other Information

None.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10535 Filed 5–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04173]

Epidemiological Follow-Up of Thyroid Disease in Persons Exposed to Radioactive Fallout From Atomic Weapons Testing at the Nevada Test Site; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a grant program to study the prevalence of thyroid disorders and cancers in adults, who, as children, were exposed to radioactive fallout from the nuclear device testing at the Nevada Test Site, 1944–1957. The study is designed to provide a third (Phase III) diagnostic examination of the thyroid gland (approximately 55 years post exposure). The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to The University of Utah, Salt Lake City, Utah. The University of Utah, under a previous five-year cooperative agreement and a one-year continuation, initiated data collection activities. They are prepared to initiate activities for Phase III of the Utah Thyroid Disease Study. To date the University of Utah has completed:

1. Developing training materials for the field team.

2. Hired the first of three field teams to perform medical exams.

3. Identified physicians need to perform biopsies of the thyroid gland.

4. Updated the exposure (dose) model algorithm.

5. Revised exposures estimated during Phase II.

6. Completed the identification of subjects needed for the mortality study.

7. Begun to locate and identify the study cohort.

It is in the best interest of the CDC to continue funding the University of Utah to completion of the Utah Thyroid Disease Study.

C. Funding

Approximately $500,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period and 12-month project period. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Robert C. Whitcomb, Jr., Ph.D., Extramural Project Officer, 1600 Clifton Road NE, Mail Stop E–39, Atlanta, GA 30333, Telephone: 404–498–1800, E-mail: *Rwhitcomb@cdc.gov*.

Dated: May 3, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10536 Filed 5–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04181]

Prevention of Mother to Child Transmission of HIV and Improving Access to Comprehensive HIV/AIDS Care for Mother, Family Members, and Other Patients in the Republic of Namibia; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to support the infrastructure in Namibia to increase their capacity to prevent HIV transmission from mother-to-child and to improve access to comprehensive HIV/AIDS care and support programs in the public sector. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Ministry of Health and Social Services (MoHSS) of Namibia for support of the PMTCT and HIV/AIDS care services. No other applications are solicited. In Namibia this program will be implemented under the name "Prevention of mother to child transmission of HIV and improving access to comprehensive HIV/AIDS care for mothers, family members, and other patients in the Republic of Namibia". The MoHSS is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

The MoHSS is uniquely positioned, in terms of support from the Government of Republic of Namibia (GRN). The MoHSS has the ability to financially and technically oversee the project, and to provide implementation of a large-scale interpersonal communication project as well as a mandate from the GRN.

The GRN has mandated the MoHSS to implement nationwide coverage of PMTCT and HIV/AIDS care programs. The vast majority of such patients are under the care of the MoHSS. For example, 84% of the deliveries to HIV-positive women take place in government hospitals compared with 16% in mission hospitals. The MoHSS has the ability to collect information, train staff and advocate for the programs implemented in the National AIDS Strategic Plan and disseminate personalized communication to support

the fight against HIV/AIDS in the Republic of Namibia.

The GRN assisted by the CDC Global AIDS Program conducted a mid-term evaluation of the performance of the national HIV/AIDS program activities in 2003. The results led the GRN to fund the MoHSS to expand efforts to address HIV/AIDS, including PMTCT and ART programs. However, funding for these vital services remains limited. Therefore, MoHSS is the only available organization approved by the GRN to implement PMTCT and comprehensive HIV/AIDS care in the public sector health facilities.

The specific services which the CDC-GAP/MOHSS project will deliver are directly associated with the CDC prevention and care strategies implemented under the Global AIDS Program in the Republic of Namibia and integrated into the MoHSS project. [INSERT JUSTIFICATION STATEMENT FOR SINGLE ELIGIBILITY. IF THE AWARD IS LEGISLATIVELY MANDATED, PLEASE CITE LEGISLATION.]

C. Funding

Approximately $5,000,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before May 1, 2004, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For technical questions about this program, contact: Dr. Tom Kenyon, Global AIDS Program, c/o U.S. Embassy Windhoek, 2540 Windhoek Place, Washington, DC 20521, Telephone: 264 61 203 2271, Fax number: 264 61 226 959, E-mail: *Tkenyon@cdc.gov*.

For budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-1515, E-mail: *zbx6@cdc.gov*.

Dated: May 3, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04-10532 Filed 5-7-04; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Anti-Infective Drugs Advisory Committee scheduled for May 10, 2004. This meeting was announced in the **Federal Register** of April 19, 2004 (69 FR 20940).

FOR FURTHER INFORMATION CONTACT: Tara P. Turner, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, fax: 301-827-6776, or e-mail:*TurnerT@cder.fda.gov*, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512530.

Dated: April 4, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04-10499 Filed 5-7-04; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Food Advisory Committee, Dietary Supplements Subcommittee of the Food Advisory Committee and Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee. The Food Advisory Committee and its Dietary Supplements subcommittee will meet for the first portion of the meeting; the Food Advisory Committee and its Contaminants and Natural Toxicants subcommittee will meet for the second portion of the meeting.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: This meeting will have two parts. The first portion of the meeting will be the Food Advisory Committee and its Dietary Supplements Subcommittee and will be held on June 7, 2004, from 8 a.m. until 5 p.m.; and on June 8, 2004, from 8 a.m. until 1:45 p.m.

The second portion of the meeting will be the Food Advisory Committee and its Contaminants and Natural Toxicants Subcommittee and will be held on June 8, 2004, from 2 p.m. until 6 p.m.

Location: Bethesda Marriott, Grand Ballroom, 5150 Pooks Hill Rd., Bethesda, MD.

Contact Person: Linda L. Reed, Center for Food Safety and Applied Nutrition (HFS-006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 301-436-2397, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014510564. Please call the Information Line for up-to-date information on this meeting.

Agenda: FDA has received health claim petitions concerning the following topics: (1) Glucosamine and chondroitin sulfate and osteoarthritis, and (2) crystalline glucosamine sulfate and osteoarthritis. The purpose of the portion of the meeting of the Food Advisory Committee and its Dietary Supplements Subcommittee is to gather information and to receive advice and recommendations relating to the etiology of osteoarthritis, its modifiable risk factors, and the relevance of scientific studies cited in the petitions to substantiating the substance-disease relationship.

The purpose of the portion of the meeting of the Food Advisory Committee and its Contaminants and Natural Toxicants Subcommittee is to discuss data needs pertaining to the evaluation of furan, a chemical formed during thermal treatments of food. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice that requests the submission of data and information pertaining to the occurrence of furan in food, its mechanism of formation as well as its mechanism of toxicity.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 24, 2004.

For the portion of the meeting of the Food Advisory Committee and its Dietary Supplements Subcommittee, oral presentations from the public will be scheduled between approximately 3:30 p.m. and 5 p.m. on June 7, 2004.

For the portion of the meeting of the Food Advisory Committee and its Contaminants and Natural Toxicants subcommittee, oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on June 8, 2004.

Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 24, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, the specific portion of the meeting at which they wish to present, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda Reed at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–10589 Filed 5–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0205]

Furan in Food, Thermal Treatment; Request for Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is requesting the submission of data and information on furan, a heat treatment related byproduct that has been detected in certain thermally treated foods. FDA is seeking data on the occurrence of furan in food, on sources of exposure to furan other than food, on mechanisms of formation of furan in food, and on the toxicology of furan, including mechanisms of toxicity. FDA will evaluate the available data and will develop an action plan that will outline FDA's goals and planned activities on the issue of furan in food. Elsewhere in this issue of the **Federal Register**, FDA is announcing a meeting of the agency's Food Advisory Committee (FAC) on June 7 to 8, 2004.

DATES: Submit data, information, and general comments by July 9, 2004. Data and information received by June 1, 2004, may be shared with the FAC before or at that meeting.

ADDRESSES: Submit written comments, data, and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, data, and information to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Lauren Posnick, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20741, 301–436–1639.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

During investigations relating to review of a petition for certain uses of irradiation in food, FDA scientists identified the substance furan in a number of foods that undergo heat treatment, such as canned and jarred foods. Furan is a colorless, volatile liquid used in some segments of the manufacturing industry. The presence of furan is a potential concern because, based on animal tests, furan is listed in the Department of Health and Human Services Report on Carcinogens (Ref. 20) and is considered possibly carcinogenic to humans by the International Agency for Research on Cancer (IARC).

FDA has developed a gas chromatography/mass spectrometry (GC/MS) method that is capable of detecting and quantitating low levels of furan in food (Ref. 1). Although furan had previously been reported in foods, FDA has recently applied this method to a wider variety of food samples than previously reported in the literature. FDA has analyzed approximately 120 food samples for furan (including replicates of the same brand/product) and found furan levels ranging from nondetectable (within the limits of detection of the method) to approximately 100 parts per billion (ppb). Jarred baby foods and canned infant formulas are among the foods in which FDA has found measurable furan. FDA has recently posted these furan data on the agency's Web site at *http://www.cfsan.fda.gov/~lrd/pestadd.html#furan*, along with a description of its GC/MS method to provide other researchers the opportunity to review and use the method.

FDA is requesting data on the occurrence of furan in food, on sources of exposure to furan other than food, on mechanisms of formation of furan in food, and on the toxicology of furan, including mechanisms of toxicity. This notice summarizes information currently available to FDA about the occurrence of furan in food, consumer exposure to furan, the mechanisms of furan formation in food, and the toxicology of furan, including the mechanism of toxicity. This notice also identifies the areas in which additional data would be helpful to FDA in learning more about furan and evaluating the risk, if any, posed by the presence of furan in food. These areas are outlined in more detail in section II of this document.

Finally, FDA will evaluate the available data and will develop an action plan that will outline FDA's goals and planned activities on the issue of furan in food. Possible elements of the action plan include an expanded survey of furan levels in food; studies to address mechanisms of furan formation in food; possible strategies to reduce furan levels (if a risk assessment indicates this is necessary); and toxicology studies to address such issues as mechanisms of furan toxicity and dose-response. Elsewhere in this issue of the **Federal Register**, FDA is announcing plans to seek, from its Food Advisory Committee at a meeting scheduled for June 7 to 8, 2004, advice about what data are needed to assess fully the risk to consumers, if any, posed by furan.

B. Occurrence of Furan in Foods

Furan is the parent compound of a class of derivative compounds collectively known as "furans." These compounds are found in a wide assortment of foods and may contribute to food's sensory characteristics (Ref. 2). The nonderivatized furan (i.e., furan) has been identified previously in a small number of heat-treated foods, including coffee, canned meat, baked bread, cooked chicken, sodium caseinate, filberts (hazelnuts), soy

protein isolate, hydrolyzed soy protein, rapeseed protein, fish protein concentrate, and caramel (Refs. 2, 3, 4, and 5). FDA has identified very little published quantitative information on furan levels in food.

C. Mechanisms of Formation

Maga reviewed the formation of furan and furan derivatives (furans) in food (Ref. 2). The primary source of furans in food is thermal degradation and rearrangement of organic compounds, particularly carbohydrates (Ref. 2). A variety of experimental systems, including heating of sugars (eg., glucose, lactose, fructose, xylose, rhamnose), heating sugars in the presence of amino acids or protein (e.g., alanine, cysteine, casein), and thermal degradation of vitamins (ascorbic acid, dehydroascorbic acid, thiamin), have been used to produce, isolate, and identify furans in food. In the studies reviewed by Maga, the nonderivatized furan was found in the following systems: Thermal degradation of glucose; thermal degradation of glyceraldehydes, D-Erythrose, pentosans, hexoses, and polysaccharide; and a lactose-casein browning system (Ref. 2). FDA has not identified any specific mechanism or mechanisms that produce furan in the samples the agency has tested to date.

D. Toxicology

1. *Carcinogenic and cytotoxic effects.* Furan is classified by IARC as possibly carcinogenic to humans (Ref. 6). Furan is both carcinogenic and cytotoxic in rodents. In a bioassay conducted by the National Toxicology Program (NTP), furan administered by gavage to Fisher 344 rats (2, 4, or 8 milligram per kilogram per body weight (mg/kg/bw)) and B6C3F1 mice (8 or 15 mg/kg per kg/bw) 5 days a week for up to 2 years produced hepatic cholangiocarcinoma, hepatocellular adenoma and carcinoma, and mononuclear cell leukemia in rats, and hepatocellular adenoma and carcinoma and benign pheochromocytoma of the adrenal gland in mice (Ref. 7). In both the 2-year NTP bioassay and a 13-week NTP study, furan also caused cell proliferation, inflammation, biliary tract fibrosis, hyperplasia, hepatocellular cytomegaly, degeneration, necrosis, and vacuolization in rats and mice (Ref. 7). A preliminary report from a second 2-year bioassay in female mice found increased incidence and multiplicity of hepatic tumors and decreased tumor latency in mice dosed with 4 or 8 mg/kg bw furan, but not in mice dosed with 0.5, 1.0, or 2.0 mg/kg bw furan (Ref. 8). Furan has also been shown to induce apoptosis in mice at hepatocarcinogenic doses (8 and 15 mg/kg bw), perhaps in response to an increased number of DNA (deoxyribonucleic acid)-altered cells (Ref. 9). In addition, cytotoxic doses of furan were shown in vivo and in vitro to cause irreversible uncoupling of hepatic mitochondrial oxidative phosphorylation, leading to adenosine triphosphate (ATP) depletion (Ref. 10).

2. *Metabolism.* Experiments in rats with [^{14}C] furan show that furan is rapidly absorbed and extensively metabolized and eliminated after ingestion; the highest concentration of the absorbed dose was retained in the liver (Ref. 11). A number of urinary metabolites of furan have been observed but not identified (Ref. 11). *cis*-2-butene-1,4-dial has been identified as a key reactive and cytotoxic metabolite of furan (Ref. 12), which has been found to bind to protein (Ref. 11) and nucleosides (Ref. 13). Both in vitro and in vivo studies show that metabolic activation by cytochrome P450 enzymes is involved in furan-induced toxicity. Glutathione inhibited the covalent binding of reactive furan metabolites to microsomal protein in vitro (Ref. 14), presumably by forming less reactive, water-soluble conjugates with the activated furans.

3. *Mutagenicity and genotoxicity.* Furan tested negative for mutagenicity in the Ames Salmonella test (with and without S9 activation) in the NTP study (Ref. 7), but was weakly positive in one test strain (TA100) in another study (Ref. 15). The furan metabolite *cis*-2-butene-1,4-dial was mutagenic at nontoxic levels in Ames assay strain TA104, but was not mutagenic in strains TA97, TA98, TA100, and TA102 (Ref. 16). Furan also tested negative for mutagenicity in germ cells of male *Drosophila melanogaster* (Ref. 17). Furan is positive in mammalian systems in vitro, such as in mouse lymphoma cells, and caused sister chromatid exchanges and chromosomal aberrations in Chinese hamster ovary cells, with and without S9 activation (Ref. 7). Furan also induced DNA double-strand breaks in isolated rat hepatocytes at doses of 100 micromolar (Ref. 18). In in vivo mammalian systems, furan induced chromosomal aberrations, but not sister chromatid exchanges, in mice bone marrow cells and in hepatocytes in mice and rats (Ref. 19). It did not cause unscheduled DNA synthesis in mouse or rat hepatocytes (Ref. 19).

4. *Mechanism of action of carcinogenesis.* As noted previously, *cis*-2-butene-1,4-dial is believed to be a key metabolite involved in furan toxicity and carcinogenesis. *cis*-2-butene-1,4-dial has been shown to form both protein and nucleoside adducts (Refs. 11 and 13); it acts as a mutagen in the Ames assay, and its acute toxic and genotoxic effects are mitigated by glutathione in vitro (Ref. 16). One hypothesis for furan carcinogenicity is that *cis*-2-butene-1,4-dial stimulates cell proliferation, increasing the likelihood of tumor induction (Ref. 20). Another hypothesis is that *cis*-2-butene-1,4-dial activity uncouples mitochondrial oxidative phosphorylation, thereby depleting ATP supplies, and leading to activation of DNA double-strand endonucleases, with the DNA double-strand breaks in surviving cells ultimately resulting in mutagenesis (Ref. 21).

5. *Additional toxicology information.* No human studies are available on the effects of furan. No data were found on the reproductive and developmental toxicology of furan.

II. Request for Data and Information

FDA has identified a number of areas in which additional data and information would be helpful to the agency in evaluating the risk, if any, posed by the presence of furan in food. These areas are outlined in more detail below. Accordingly, FDA invites all interested persons to submit data and information on the topics identified.

Interested persons should submit comments on the information in this notice and responsive data and information to the Division of Dockets Management (see **ADDRESSES**) by July 9, 2004. Three copies of all comments, data, and information are to be submitted. Individuals submitting written information or anyone submitting electronic comments may submit a single copy. Submissions should be identified with the docket number found in brackets in the heading of this document. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FDA requests data and other information that responds to the following questions:

A. *Concerning the occurrence of furan in foods and consumer exposure to furan, FDA has identified the following data needs*:

1. Data and information on the particular foods in which furan occurs.

2. Data on levels of furan in these foods.

3. Data on the formation and occurrence of furan in home-prepared foods, as opposed to manufactured foods.

4. Data on environmental sources of furan to which a typical consumer is likely to be exposed.

B. *Concerning the mechanisms of the formation of furan in food, FDA has identified the following data needs*:

1. Data and information on possible mechanisms of furan formation.

2. Data and information on variables that enhance or mitigate furan formation in foods.

3. Data on the stability or dissipation of furan in foods.

4. Data about the effect of post-production practices, such as consumer heating of canned foods, on furan levels in foods.

C. *Concerning the toxicology of furan, FDA has identified the following data needs*:

1. Data and information on mechanism(s) of furan toxicity, mutagenicity, and carcinogenesis.

2. Data and information on the reproductive and developmental toxicology of furan.

3. Data and information on the metabolism of furan in vivo, including characterization of any reactive furan metabolites in addition to *cis*-2-butene-1,4-dial, and data on the role of such metabolites in producing furan's adverse effects, including carcinogenesis.

4. Data and information on the diversity of furan pharmacokinetics in humans or the alteration of furan metabolism as a result of dietary, medical, or environmental interactions.

5. Data and information on whether sub-cytotoxic furan doses produce any adverse effect, such as a change in enzyme activities or ATP levels.

6. In the NTP furan study, Cytotoxic and carcinogenic effects were seen at all doses, and a no adverse effect level (NOAEL) was not identified. A preliminary report by Goldsworthy et al. showed an NOAEL dose of 2.0 mg/kg bw in female mice, but data from this study are not yet available (Ref. 12). FDA would like to acquire data on the effects of furan doses lower than those used in the NTP study in order to accomplish the following objectives: (a) Establish a dose-response curve for the various toxicological endpoints, (b) Determine whether furan toxicity, including carcinogenesis, is a threshold-dependent event; and (c) determine whether the carcinogenic activity of furan is secondary to its hepatotoxic effects.

7. Additional data on the mutagenicity of furan in the TA100 strain in the Ames test, given the two existing contradictory reports.

8. Additional data and information on the behavior of furan in other in vivo assays for mutagenicity or toxicity.

III. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, "Determination of Furan in Foods," 2004, *http://www.cfsan.fda.gov/~lrd/pestadd.html#furan*.

2. Maga, J. A., *CRC Critical Reviews in Food Science and Nutrition*, "Furans in foods," pp. 355–400, 1979.

3. NRC (National Research Council), *Spacecraft Maximum Allowable Concentrations for Selected Airborne Contaminants*, vol. 4., appendix B14, "Furan," pp. 307–329, National Academy Press, Washington, DC, 1994.

4. Persson, T. and E. von Sydow, "Aroma of canned beef: Gas chromatographic and mass spectrometric analysis of the volatiles," *Journal of Food Science*, 38: 377–385, 1973.

5. Stoffelsma, J., G. Sipma, D. K. Kettenes, and J. Pypker, "Volatile components of roasted coffee," *Journal of Agricultural Food Chemistry*, 16(6): 1000–1004, 1968.

6. IARC, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, Volume 63: "Dry Cleaning, Some Chlorinated Solvents and Other Industrial Chemicals," pp. 394–407, Lyon, France, 1995.

7. NTP, "Toxicology and carcinogenesis studies of furan (CAS No. 110–00–9) in F344/N rats and B6C3F$_1$ mice (gavage studies)," NTP Technical Report No. 402., U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, Research Triangle Park, NC, 1993.

8. Goldsworthy, T. L., R. Goodwin, R. M. Burnett, P. King, H. El-Sourady, G. Moser, J. Foley, and R. R. Maronpot, "Dose Response Relationships Between Furan Induced Cytotoxicity and Liver Cancer," Society of Toxicologic Pathology Annual Conference, Orlando, FL, 2001.

9. Fransson-Steen, R., T. L. Goldsworthy, G. L. Kedderis, and R. R. Maronpot, "Furan-induced liver cell proliferation and apoptosis in female B6C3F1 mice," *Toxicology*, 118(2–3): 195–204, 1997.

10. Mugford, C. A., M. A. Carfagna, and G. L. Kedderis, "Furan-mediated uncoupling of hepatic oxidative phosphorylation in Fischer-344 rats—an early event in cell death," *Toxicology Applied Pharmacology*, 144(1):1–11, 1997.

11. Burka, L. T., K. D. Washburn, and R. D. Irwin, "Disposition of [^{14}C]furan in the male F344 rat," *Journal of Toxicology and Environonmental Health*, 34(2): 245–257, 1991.

12. Chen L.-J., S. S. Hecht , and L. A. Peterson, "Identification of *cis*-2-butene-1,4-dial as a microsomal metabolite of furan," *Chemical Research in Toxicology* 8(7): 903–906, 1995.

13. Byrns, M. C., D. P. Predecki, and L. A. Peterson, "Characterization of nucleoside adducts of *cis*-2-butene-1,4-dial, a reactive metabolite of furan," *Chemical Research in Toxicology* 15(3):373–9, 2002.

14. Parmar, D. and L. T. Burka. "Studies on the interaction of furan with hepatic cytochrome P-450," *Journal of Biochemical Toxicology*, 8: 1–9, 1993.

15. Lee, H., S. S. Bian, and Y. L. Chen, "Genotoxicity of 1,3-dithiane and 1,4-dithiane in the CHO/SCE assay and the *Salmonella*/microsomal test," *Mutation Research*, 321(4): 213–218, 1994.

16. Peterson, L. A., K. C. Naruko, and D. P. Predercki, "A reactive metabolite of furan, *cis*-2-butene-1,4-dial, is mutagenic in the Ames assay," *Chemical Research in Toxicology*, 13(7): 531–534, 2000.

17. Foureman, P., J. M. Mason, R. Valencia, and S. Zimmering, "Chemical mutagenesis testing in Drosophila, IX. Results of 50 coded compounds tested for the National Toxicology Program," *Environmental and Molecular Mutagenesis*, 23(1): 51–63,1994

18. Mugford, C.A. and G. L. Kedderis, "Furan-mediated DNA double strand breaks in isolated rat hepatocytes," *Fundamental Applied Toxicology*, 30(1, Part 2):128, 1996.

19. Wilson, D. M., T. L. Goldsworthy, J. A. Popp, and B. E. Butterworth, "Evaluation of genotoxicity, pathological lesions, and cell proliferation in livers of rats and mice treated with furan," *Environmental and Molecular Mutagenesis*, 19(3): 209–222, 1992.

20. National Toxicology Program (NTP), Report on Carcinogens, 10th ed., U.S. Department of Health and Human Services, Public Health Service, 2002.

21. Kedderis G. L. and S. A. Ploch, "The Biochemical Toxicology of Furan," CIIT Activities 19(12), 1999.

Dated: May 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–10588 Filed 5–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/

496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Rapid Integration Site Mapping

Shawn Burgess (NHGRI).
U.S. Provisional Application filed 20 Apr 2004 (DHHS Reference No. E–027–2004/0–US–01).
Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

This invention describes a novel method for mapping retroviral integration sites within genomic DNA. The invention provides for rapid integration profiling with reduced labor and time required and reduces the inherent biases resulting from other techniques.

The technology uses pre-selected frequent cutting restriction enzymes and proprietary linkers to produce smaller amplicons that, in practice, reduce the bias effects of other more commonly used mapping techniques that often include linear amplification as a first step. Further, the technology does not require the use of measurable phenotypic characteristics to analysis or distinguish integration events. Thus, knowledge of potential cellular changes is not required. This invention can be used to provide rapid, cost-effective screening of cells treated with retroviruses for gene therapy. The ability to identify potentially harmful integrations and eliminating them from therapeutic use is essential for safer gene therapy applications.

Additional information may be found in X. Wu *et al.*, "Transcription Start Regions in the Human Genome are Favored Targets for MLV Integration", *Science* Jun 13 2003 300:1749–1751.

Novel Method of Fat Suppression in Steady State Free Precession (SSFP) Based Magnetic Resonance Imaging (MRI)

John Derbyshire, Daniel Herzka, Elliot McVeigh (NHLBI).
U.S. Provisional Application filed 08 Mar 2004 (DHHS Reference No. E–237–2003/0–US–01).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing is a technique for improving magnetic resonance imaging (MRI) that employs steady state free precession (SSFP). One such technique, fast imaging with steady-state free precession (FISP), is a well established and is a fast MR imaging method commonly used to evaluate cardiovascular anatomy and function. FISP provides high signal to noise ratio (SNR) images with excellent contrast between blood and the myocardium. However, these images are often contaminated with high signal from fatty tissue resulting in image artifacts. Conventional methods of fat signal suppression in FISP are often inefficient and result in a loss of temporal resolution. The present pulse sequence provides intrinsic chemical selectivity and significant attenuation of fat-based signals (by a factor of four compared to conventional FISP imaging) while maintaining the preferred high SNR for water-based tissues provided by standard FISP. In addition, the pulse sequence design is such that the high temporal resolution of FISP is not compromised. Thus, this technology offers a valuable improvement to standard cardiac MRI methods.

γPGA Conjugates for Eliciting Immune Responses Directed Against *Bacillus Anthracis* and Other Bacilli

Rachel Schneerson (NICHD), Stephen Leppla (NIAID), John Robbins (NICHD), Joseph Shiloach (NIDDK), Joanna Kubler-Kielb (NICHD), Darrell Liu (NIDCR), Fathy Majadly (NICHD).
U.S. Provisional Application No. 60/476,598 filed 05 Jun 2003 (DHHS Reference No. E–343–2002/0–US–01).
Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

This invention claims immunogenic conjugates of a poly-γ-glutamic acid (γPGA) of *B. anthracis*, or of another bacillus that expresses a γPGA that elicit a serum antibody response against *B. anthracis*, in mammalian hosts to which the conjugates are administered. The invention also relates methods which are useful for eliciting an immunogenic response in mammals, particularly humans, including responses which provide protection against, or reduce the severity of, infections caused by *B. anthracis*. The vaccines claimed in this application are intended for active immunization for prevention of *B. anthracis* infection, and for preparation of immune antibodies. The vaccines of this invention are designed to confer specific immunity against infection with *B. anthracis*, and to induce antibodies specific to *B. anthracis* γPGA. The *B. anthracis* vaccine is composed of non-toxic bacterial components, suitable for infants, children of all ages, and adults.

This vaccine is further described in Schneerson R. *et al.*, "Poly(gamma-D-glutamic acid) protein conjugates induce IgG antibodies in mice to the capsule of *Bacillus anthracis*: a potential addition to the anthrax vaccine," *Proc. Natl. Acad. Sci.* U. S. A. 2003 Jul 22;100(15):8945–50.

Contrast Agent Enhancement of Chemical Exchange Dependent Saturation Transfer (CEDST) MRI

Robert S. Balaban, Kathleen Ward, Anthony H. Aletras (NHLBI).
U.S. Patent Application No. 09/959,138 filed 17 Oct 2001 (DHHS Reference No. E–240–1998/0–US–04).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing is an MRI image improving system wherein at least one contrast agent is administered to a subject in amounts effective to perform chemical exchange dependent saturation transfer (CEDST) MRI analysis.

Examples of contrast agents suitable for administration as exogenous contrast agents include at least one functional group bearing a proton capable of chemical exchange. Examples of these functional groups include, without limitation, amides, amines, and carboxyl, hydroxyl, and sulfhydryl groups.

The contrast agent can be administered as a solid, as a dispersion or solution, such as an aqueous composition, as a mixture of two or more agents, etc. The contrast agent may also be in the form of a polymer.

One feature of the present invention involved identifying contrast agents, which contain the functional groups having the appropriate proton exchange and chemical shift properties at physiological pH and temperature to function effectively for performing CEDST MRI analyses in vivo. A number of different contrast agents can be used to practice the present method for performing CEDST MRI analyses in vivo can be selected from the group consisting of: Sugars, including oligosaccharides and polysaccharides, such as dextran; amino acids, such as 5-hydroxy-tryptophan (which also includes an indole -NH) and including oligomers of amino acids and proteins; nitrogen-containing heterocycles generally; indoles, purines and pyrimidines; nucleosides; imidazole and derivatives thereof, such as 2-imidazolidone and 2-imidazoldinethione; imino acids, including azetidines, such as azetidine-2-carboxylic acid, pyrolidines, such as 4-trans-hydroxy-proline, and piperidines, such as pipecolinic acid; barbituric acid and analogs thereof, such as 2-thio-barbituric acid and 5,5-diethylbarbituric acid; miscellaneous materials, such as guanidine, hydantoin, parabanic acid, and biologically active salts thereof; and mixtures of these contrast agents.

Working embodiments of the invention used the all of above materials at a variety of concentration levels for in-vitro experiments and, using a 500 mM solution of barbituric acid, in an in-vivo rabbit model.

The method of the present invention is useful for enhancing the contrast of MRI images, including images produced in vivo, using CEDST.

A second feature of the present invention involved identifying contrast agents which contained the functional groups which could be used, either alone or in combination, to function effectively at performing pH measurement using CEDST in vivo.

Working embodiments of this feature of the invention used either dihydrouracil or a combination solution of 5-Hydroxytryptophan and 2-Imidazolidinethione as the contrast agent, which was provided as an aqueous composition having about 62.5 mM of each chemical in the solution. Other chemicals with more than one chemical exchange site or mixtures of other contrast agents may also be used to practice the second feature of the present invention. A standard pH curve is prepared by performing in vitro CEDST MRI analyses of the contrast agent, which is then used to evaluate the in vivo pH measurement results.

A third feature of the present invention involved identifying contrast agents which contained the functional groups which could be used to function effectively at performing temperature measurement using CEDST in vivo.

Working embodiments of this feature of the invention used barbituric acid as the contrast agent, which was provided as an aqueous composition having about 62.5 mM of chemical in the solution. Other chemicals may be used to practice the third feature of the present invention. A standardized temperature curve is prepared performing in vitro CEDST MRI analyses of the contrast agent, which is then used to evaluate the in vivo temperature results.

A fourth feature of the present invention involved identifying contrast agents which contained the function groups which could be used to function effectively at measuring a metabolite of interest using CEDST in vivo.

Working embodiments of this feature of the invention used dihydrouracil as the contrast agent, which was provided as an aqueous composition having about 62.5 mM with phosphate as the metabolite of interest. Other chemicals may be used to practice the third feature of the present invention. A standardized metabolite curve is prepared performing in vitro CEDST MRI analyses of the contrast agent, which is then used to evaluate the in vivo metabolite results.

Dated: May 3, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–10495 Filed 5–7–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: July 6–7, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Houston Plaza, 6633 Travis Street, Houston, TX 77030.

Contact Person: Deborah R. Jaffe, PhD., Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Rm 8135, Bethesda, MD 20892, (301) 496–7721, *jaffed@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10493 Filed 5–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Molecular Libraries Repository RFP.

Date: May 17, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lois M. Winsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 7184, MSC 9641, Bethesda, MD 20892–9641, (301) 443–5288 *twinsky@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10492 Filed 5–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patenable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: May 25, 2004.

Closed: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate BSC Report.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Open: 9 a.m. to 2:30 p.m.

Agenda: Reports, Presentations, Poster Session.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, Assistant to the Director, NIH–NIDCR, Building 31, Rm. 5B55, Bethesda, MD 20892, (301) 594–2089, *norman.braveman@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/discover/nadrc/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10494 Filed 5–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Planning and Performance Management; Agency Information Collection Activities: Proposed Collection Extension/Renewal; Comment Request

AGENCY: Department of the Interior.

ACTION: Notice of extension/renewal of information collection survey.

SUMMARY: To comply with the requirements of the Paper Reduction Act (PRA) of 1995, we are inviting comments on the extension/renewal of an information collection, titled, "DOI Programmatic Clearance for Customer Satisfaction Surveys," OMB Control #1040–0001, that we will submit to the Office of Management and Budget (OMB) for review and approval.

DATES: Please submit written comments by July 9, 2004.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Office of Policy, Management and Budget; Office of Planning and Performance Management; Attention: Sheri Harris; Mail Stop 5258; 1849 C Street, NW., Washington, DC 20240. If you wish to email comments, the e-mail address is *sheri_harris@ios.doi.gov*. Reference "DOI Programmatic Clearance for Customer Satisfaction Surveys" in your email subject line. Include your name and return address in your email message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Sheri L. Harris, Office of Planning and Performance Management, telephone (202) 208–7342. You may also contact Sheri Harris to obtain a copy at no cost of the collection of information statement that will be submitted to the Office of Management and Budget.

SUPPLEMENTARY INFORMATION:

Title: Extension/Renewal of DOI Programmatic Clearance for Customer Satisfaction Surveys.

OMB Control Number: 1040–0001.

Renewal/Extension.

Abstract: DOI is requesting an extension/renewal of its 3-year programmatic clearance for customer satisfaction surveys, originally approved by the Office of Management and Budget (OMB) in January 2002 and expiring on January 31, 2005. The programmatic clearance enables Interior bureaus and offices to conduct customer research through external surveys such as questionnaires and comment cards. This information is being collected to improve the services and products that DOI provides to the public. DOI will use this information to support all aspects of planning—from buildings, roads, and interpretive exhibits, to technical systems. DOI anticipates that the information obtained could lead to reallocation of resources, revisions in certain agency processes and policies, development of guidance related to DOI's customer services, and improvement in the way we serve the American public. Ultimately, these changes should result in improvement in services DOI provides to the public and, in turn, the public perception of DOI.

From Whom Will data Be Collected: This proposal seeks to extend/renew an existing Programmatic clearance for Customer Satisfaction Surveys that allows Interior and its organizational units to collect satisfaction information from its customers. Interior defines customers as anyone who uses DOI resources, products, or services. This includes internal customers (anyone within DOI) as well as external customers (e.g., the American public, representatives of the private sector, academia, other government agencies). Depending upon their role in specific situations and interactions, citizens and DOI stakeholders and partners may also be considered customers. We define stakeholders to mean groups or individuals who have an expressed interest in and who seek to influence the present and future state of DOI's resources, products, and services. Partners are defined as those groups, individuals, and agencies who are formally engaged in helping DOI accomplish its mission.

Rationale for Request for Renewal: Interior will request extension/renewal of its Programmatic Clearance for Customer Satisfaction Surveys so that we may better fulfill our responsibilities to provide excellence in government by proactively consulting with those we

serve to identify opportunities to improve our information, services, and products to better meet their needs. In addition, customer information is needed to meet requirements of the Government Performance and Results Act (GPRA) of 1993 (P.L. 103–62), the Administration's Program Assessment Rating Tool (PART), the President's Management Agenda (PMA), and Interior's Citizen-Centered Customer Service Policy.

How Data Will Be Used: The GPRA requires agencies to "improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction" (Section 2.b.3). In order to fulfill this responsibility, DOI's bureaus and offices must collect data from their respective user groups to (1) Better understand the needs and desires of the public and (2) respond to those needs and desires accordingly. The renewal will provide us with the necessary authority to collect these data.

Renewal of the Programmatic Clearance for Customer Satisfaction Information is also critical to the Department's ability to collect data essential for assessing progress toward achieving the goals established in our GPRA Strategic Plan. That plan contains a number of performance measures that directly correspond to customer, partner, and stakeholder satisfaction with specific services of Interior and its bureaus and offices. To accurately report whether or not we met targets set for these performance measures, it is imperative for Interior's bureaus and offices to collect data from those we serve.

Interior's Department-wide Customer and Citizen-Centered Service Policy admonishes its bureaus and offices to consult and communicate with customers to integrate their feedback into our programs and business processes in order to improve our service to them. It specifically asks Interior bureaus and offices to obtain customer satisfaction data on an annual basis and to use these data to implement programmatic improvements. The renewal of our Programmatic Clearance will assist these organizations in complying with the Departmental policy.

Executive order (E.O.) 12862 (September 11, 1993) aimed at "ensuring the Federal Government provides the highest quality service possible to the American people" fortifies our mandate by the Secretary of the Interior and the Administration to provide "citizen-centered government." The E.O. discusses surveys as a means for determining the kinds and qualities of service desired by the Federal Government's customers and for determining satisfaction levels for existing service. These voluntary customer surveys will be used to ascertain customer satisfaction with DOI's bureaus and offices in terms of services and products. Previous customer surveys have provided useful information to DOI's bureaus and offices for assessing how well we deliver our services and products, making improvements, and reporting on GPRA performance goals. The results are used internally, and summaries are provided to the OMB on an annual basis and are used to satisfy the requirements and spirit of E.O. 12862.

Which DOI Bureaus and Offices Are Covered by This Proposal: The proposed renewal/extension covers all of the organizational units and bureaus in DOI. It will enable participating DOI bureaus and offices will perform their customer surveys under one programmatic clearance. Under this proposed renewal/extension, DOI will request that OMB review the procedures and questions for these surveys as a program rather than reviewing each survey individually. Under the procedures proposed here, DOI will conduct the necessary quality control, including assurances that the individual survey comports with the guidelines of the programmatic clearance, and submit the particular survey instrument and methodology for expedited review to OMB.

Types of Questions to be Asked: The participating bureaus and offices propose to voluntarily obtain information from their customers and stakeholders. No one survey will cover all the topic areas; rather, these topic areas serve as a guide within which the agencies will develop their questions. Questions may be asked in languages other than English, *e.g.*, Spanish, where appropriate.

We protect information submitted by respondents that is considered confidential or proprietary under the Freedom of Information Act and in accordance with Privacy Act regulations on protecting these data. Respondents are informed of this assurance on the survey forms or during the course of the survey interview.

1. *Communication/information/education:* The range of questions envisioned for this topic area will focus on customer satisfaction with aspects of communication/information/products/education offered. Respondents may be asked for feedback regarding the following attributes of the services provided:

- Timeliness
- Consistency
- Ease of Use and Usefulness
- Ease of Information Access
- Helpfulness and Effectiveness
- Quality
- Value for fee paid for information/product/service
- Level of engagement in communications process (*i.e.*, whether respondent feels he/she was asked for input and whether or not that input was considered)

2. *Disability accessibility:* This area will focus on customer satisfaction data related to disability access to Interior buildings, facilities, trails, etc.

3. *Management practices:* This area covers questions relating to how well customers are satisfied with Interior management practices and processes, what improvements they might make to specific processes, and whether or not they feel specific issues were addressed and reconciled in a timely, courteous, responsive manner.

4. *Resource management:* Questions will ask customers and partners to provide satisfaction data related to Interior's ability to protect, conserve, provide access to, and preserve natural resources that we manage.

5. *Rules, regulations, policies:* This area focuses on obtaining feedback from customers regarding fairness, adequacy, and consistency in enforcing rules, regulations, and policies for which Interior is responsible. It will also help us understand public awareness of rules and regulations and whether or not they are articulated in a clear and understandable manner.

6. *Service delivery:* Questions will seek feedback from customers regarding the manner in which services were delivered to them by Interior. Attributes will range from the courtesy of Interior staff to timeliness of service delivery and staff knowledge of the services being delivered.

7. *Technical assistance:* Questions developed within this topic area will focus on obtaining customer feedback regarding attributes of technical assistance—ranging from timeliness, to quality, to usefulness, and the skill level of staff providing this assistance.

8. *Program-specific:* Questions for this area will reflect the specific details of a program that pertain to its customer respondents. The questions will be developed to address very specific and/or technical issues related to the program. The questions will be geared toward gaining a better understanding about how to provide specific products and services and the public's attitude toward their usefulness.

9. *General demographics:* Some general demographics may be used to augment satisfaction questions in order

to better understand the customer so that we can improve how we serve that customer. Demographics data will range from asking customers how many times they have used an Interior service or visited an Interior facility in the past X timeframe to their ethnic group or race. Sensitivity will be used in developing and selecting questions under this topic area so that the customer does not perceive an intrusion upon his/her privacy.

This effort does not duplicate any other survey being done by DOI or other Federal agencies. Other Federal agencies are conducting user surveys but are not soliciting comments on the delivery of DOI or DOI bureau/office products and services. As part of this effort, DOI consulted with other agencies, including the Department of Agriculture and the U.S. Environmental Protection Agency, who conduct surveys of similar customers.

Anticipated Public Burden: We estimate approximately 60,000 respondents submit DOI customer satisfaction surveys and comment cards annually. The average public burden to complete a customer survey is 15 minutes. For comment cards, the average public burden is estimated at 3 minutes. Given these estimates, DOI anticipates a budget of 18,000 hours per year for the proposed renewal. No non-hour cost burden has been identified.

Methodology: All requests to collect information under the auspices of this proposed renewal will be carefully evaluated to ensure consistency with the intent, requirements, and boundaries of this programmatic clearance. Interior's Office of Planning and Performance Management will conduct an administrative review of each request and oversee technical reviews to ensure statistical validity and soundness. All information collection instruments will be designed and deployed based upon acceptable statistical practices and sampling methodologies, and will be used to obtain consistent, valid, data that are representative of the sample, account for non-response bias, and target response rates at or above 70%.

All submissions under the program of expedited approval must include a description of the survey methodology. This description must be specific and describe each of the following: (a) Respondent universe, (b) the sampling plan and all sampling procedures, including how individual respondents will be selected, (c) how the information collection instrument will be administered, (d) expected response rate and confidence, and (e) levels strategies for dealing with potential non-response bias. A description of any pre-testing and peer review of the methods and/or instrument is also highly encouraged.

Improved information technology will be used, when possible, to reduce the burden on the public and to comply with requirements of the Government Paperwork Elimination Act (GPEA). Electronic mail may be used to introduce and distribute information collection instruments to a sample of customers. In some cases, the instruments may be web-enabled so that respondents can complete them online, enabling the response analysis to be automated. In all cases, appropriate non-response bias strategies will be used to ensure that responses are representative of the contact universe.

Comment Policy: The Paperwork Reduction Act (PRA) provides that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Before submitting an information collection request (ICR) to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burden.

Agencies must estimate both the "hour" burden and "non-hour cost" burden to respondents or record keepers resulting from the collection of information. We have not identified any non-hour cost burdens for the information collection aspects of the programmatic customer satisfaction survey. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period of which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

However, we will not consider anonymous comments. We will make all submissions from organizations or business, and from individuals identifying themselves as representatives of organizations or businesses, available for public inspection in their entirety.

Dated: April 30, 2004.

Raymond Beittel,

Acting Director, Office of Planning and Performance Management.

[FR Doc. 04–10545 Filed 5–7–04; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF INTERIOR

Bureau of Indian Affairs

Coyote Valley Reservation of California Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Coyote Valley Reservation of California Liquor Ordinance. The ordinance regulates and controls the possession and sale of liquor on the Coyote Valley Reservation of California.

EFFECTIVE DATE: This Ordinance is effective on May 10, 2004.

FOR FURTHER INFORMATION CONTACT: Duane T. Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Tribal Council of the Coyote Valley Band of Pomo Indians adopted a Tribal Liquor Ordinance on March 6, 2003. The purpose of this ordinance is to regulate and to control the possession and sale of liquor on the Coyote Valley Reservation of California.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

I certify that the Liquor Control Ordinance of the Coyote Band of Pomo Indians was duly adopted by the Coyote Valley Tribal Council by enactment of Council Resolution No. 03–06–03 on March 6, 2003.

David W. Anderson,

Assistant Secretary—Indian Affairs.

The Liquor Control Ordinance of the Coyote Valley Band of Pomo Indians reads as follows:

Ordinance No. 03–01–03; Liquor Control Ordinance of the Coyote Valley Band of Pomo Indians

Chapter I—Introduction

101. *Title.* This Ordinance shall be known as the "Liquor Ordinance of the Coyote Valley Band of Pomo Indians."

102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161), pursuant to the Tribe's inherent sovereign authority and Article VII Sections 1(i) and (n) of the Document Embodying the Laws, Customs and Traditions of the Coyote Valley Band of Pomo Indians adopted on October 4, 1980, under which the Band has been operating, as well as any other applicable laws.

103. *Purpose.* The purpose of the Liquor Ordinance is to regulate and to control the possession and sale of liquor on the Coyote Valley Reservation. The enactment of a tribal ordinance governing liquor possession and sale on the Reservation will increase the ability of the tribal government to control Reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

104. *Tribal Jurisdiction.* This ordinance applies to all lands in which the Coyote Valley Band of Pomo Indians holds an ownership interest and which are defined as Indian country under 18 U.S.C 1151. At the time of enacting this ordinance the Reservation does not have an ownership interest in any lands defined by 18 U.S.C. 1154(c) as fee-patented land in a non-Indian community or rights-of-ways which run through the Reservation's lands. This ordinance is intended to be in conformity with the California State alcohol laws as required by 18 U.S.C. 1161.

Chapter 2—Definitions

201. As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

202. *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of alcohol, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substance including all dilutions of this substance.

203. *Alcoholic Beverage* is synonymous with the term "Liquor" as defined in section 208 of this chapter.

204. *Bar* means any establishment with special space and accommodations for sale by the glass and or for consumption on the premises of any liquor or alcoholic beverage, as herein defined.

205. *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or concoction of pure hops, or pure extract of hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "Strong Beer."

206. *The Tribal Council* as used herein means the body authorized by the 1980 Coyote Valley Tribal Constitution to promulgate all tribal ordinances and regulations.

207. *Liquor* includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid of solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid or substance which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

208. *Liquor Store* means any store at which liquor is sold and, for the purpose of this Liquor Ordinance, includes stores only a portion of which are devoted to the sale of liquor or beer.

209. *Malt Liquor* means beer, strong beer, ale, stout, and porter.

210. *Package* means any container or receptacle used for holding liquor.

211. *Public Place* includes state or county or Tribal or federal highways or roads; buildings and grounds used for school/recreational purposes; public dance halls and grounds adjacent thereto, soft drink establishment; public meeting halls; lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store, garages, and filling stations which are open to and/or generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Liquor Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

212. *Reservation* means lands held in trust by the United States Government for the benefit of the Coyote Valley Band of Pomo Indians (see also Tribal Land).

213. *Sale and Sell* include exchange, barter and traffic and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

214. *Spirits* means any beverage which contains alcohol obtained by distillation including wines exceeding seventeen percent of alcohol by weight.

215. *Tribe* means the Coyote Valley Band of Pomo Indians.

216. *Tribal Lands* mean any lands within the exterior boundaries of the Reservation including land leased to other parties.

217. *Trust Account* means the account designated by the Tribal Council for deposit of proceeds from any tax or fee

levied by the Tribal Council and relating to the sale of alcoholic beverages.

218. *Trust Agent* means the Tribal Chairperson and his or her designee.

219. *Wine* means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines, fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Chapter III—Powers of Enforcement

301. *Powers.* The Tribal Council, in the furtherance of this Liquor Ordinance, shall have the following powers and duties:

(a) To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reservation;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions; all such employees shall be Tribal employees;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;

(d) To hold hearings on violations of this Liquor Ordinance or for the issuance or revocation of licenses hereunder pursuant to sections 501 through 506;

(e) To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;

(f) To determine and seek damages for the violation of this Liquor Ordinance; and

(g) To collect taxes and fees levied or set by the Tribal Council, and to keep accurate records, books and accounts.

302. *Limitation on Powers.* In the exercise of its powers and duties under this Liquor Ordinance, the Tribal Council and its individual members shall not accept any gratuity, compensation or other thing of value from any licensee or any liquor wholesaler, retailer or distributor.

303. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council or its designee at all reasonable times, which include the hours the business is open to the public, for the purpose of ascertaining whether the rules or regulations of the Liquor Ordinance are being followed.

Chapter IV—Sales of Liquor

401. *Tribal Liquor License Required; Tribally Owned Businesses.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Reservation except at a tribally licensed or tribally owned business licensed by both the Tribe and the State of California. Nothing in this section shall prohibit a tribal licensee or the Tribe from purchasing liquor from an off-reservation source for resale on the Reservation or the delivery to the Tribe for a tribal licensee of liquor purchased from off-reservation sources for resale on the Reservation.

402. *Sale only on Tribal Land.* All liquor sales within the exterior boundaries of the Reservation shall be on Tribal Land, including leases thereon.

403. *Sales for Cash.* All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or major credit cards such as MasterCard, Visa, American Express, etc.

404. *Sales for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation, and sells it, whether in the original container or not, shall be guilty of a violation of this Liquor Ordinance and shall be subject to paying damages to the Tribe as set forth herein.

Chapter V—Licensing

501. *Application for Tribal Liquor License Requirements.* No Tribal license shall be issued under this Liquor Ordinance except upon a sworn application filed with the Tribal Council containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of California to sell alcoholic beverages;

(b) Satisfactory proof that the applicant is of good character and reputation and that the applicant is financially responsible;

(c) The description of the premises in which the alcoholic beverages are to be sold and proof that the applicant is the owner of such premises or the lessee of such premises for at least the term of the license;

(d) Agreement by the applicant to accept and abide by all conditions of the Tribal license;

(e) Payment of a fee established from time to time by the Tribal Council. Said fee is established initially at two hundred and fifty dollars ($250.00) but can be changed by Tribal Council resolution at any time;

(f) Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, if an entity, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State of California; and

(g) Satisfactory proof that the notice of application has been posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold for at least 30 days prior to consideration by the Tribal Council and has been published at least twice in such local newspaper serving the community that may be affected by the license as the Tribal Council may authorize. The notice shall state the date, time, and place when the application shall be considered by the Tribal Council pursuant to section 502 of this ordinance.

502. *Hearing on Application for Tribal Liquor License.* All applications for a Tribal Liquor License shall be considered by the Tribal Council in open session at which the applicant, his, her or its attorney, and any persons protesting the application shall have the right to be present, and to offer sworn, oral or documentary evidence relevant to the application. After the hearing, the Tribal Council, by secret ballot, shall determine whether to grant or deny the application based on: (1) Whether the requirements of section 501 have been met; and (2) whether the Tribal Council, in its discretion, determines that granting the license is in the best interest of the Tribe. In the event that the applicant is a member of the immediate family of a Tribal Council member, such Tribal Council member shall not vote on the application or participate in the hearings as a Tribal Council member. For purposes of this section "immediate family member" shall be defined as mother, father, brother, sister spouse or child.

503. *Temporary Permits.* The Tribal Council or its designee may grant a temporary permit for the sale of liquor for a period not to exceed three (3) days to any person applying for the same in connection with a Tribal or community activity, provided that the applicable conditions prescribed in section 504 of this Liquor Ordinance shall be observed by the permittee. Each permit issued

shall specify the types of alcoholic beverages to be sold. Further, a fee of fifty dollars ($50.00) will be assessed on temporary permits.

504. *Conditions of a Tribal Liquor License.* Any tribal liquor license issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Tribal Council shall fix, including but not limited to, the following;

(a) The license shall be for a term not to exceed one (1) year.

(b) The licensee shall at all times maintain an orderly, clean and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be subject to patrol by Tribal law enforcement personnel and other such law enforcement officials as may be authorized under federal, California or Tribal law.

(d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(e) Subject to the provisions of subsection "g" of this section, no liquor or alcoholic beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Tribal Council, provided that the licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of California.

(f) No liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum or initiative is held of the voting members of the Tribe, and including special days of observation as designated by the Tribal Council.

(g) All acts and transactions under the authority of the Tribal liquor license shall be in conformity with the laws of the State of California, with this Liquor Ordinance, and with any Tribal liquor license issued pursuant to this Liquor Ordinance.

(h) No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment or area.

(i) There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

505. *Licenses not a Property Right.* Notwithstanding any other provision of this Liquor Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor ordinance give rise to a presumption of legal entitlement to a license/permit in a subsequent time period.

506. *Assignment or Transfer.* No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Tribal Council expressed by formal resolution.

Chapter VI—Regulations and Enforcement

601. *Sale or Possession with Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this Liquor Ordinance, or who shall operate or shall have liquor in his or her possession with intent to sell or distribute without a license or permit, shall be guilty of a violation of this Liquor Ordinance.

602. *Purchase From Other Than Licensed or Allowed Facilities.* Any person who, within the boundaries of the Reservation, buys liquor from any person other than at a properly licensed or allowed facility shall be guilty of a violation of this Liquor Ordinance.

603. *Sales to Persons under the Influence of Liquor.* Any person who sells Liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Liquor Ordinance.

604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any liquor in any public conveyances shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this Liquor Ordinance.

605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his or her possession any alcoholic beverage. No person shall permit any other person under the age of 21 years to consume liquor on his premises or any premises under his control except in those situations set out in this Section. Any person violating this Section shall be guilty of a separate violation of this Liquor Ordinance for each and every drink consumed.

606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this Liquor Ordinance for each sale or drink provided.

607. *Transfer of Identification to a Minor.* Any person who transfers in any manner an identification of age to a minor for purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

608. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification shall be guilty of a violation of this Liquor Ordinance.

609. *Acceptable Identification.* Where there may be the question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any of the following cards of identification which shows his or her correct age and bears his or her signature and photograph:

(1) A driver's license of any state or identification card issued by any state department of motor vehicles;

(2) United States active military duty; or

(3) A passport.

610. *Violations of this Liquor Ordinance.* Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe a civil fine not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or cancelled by the Tribal Council for the violation of any of the provisions of this Liquor Ordinance, or of the Tribal license or permit, upon hearing before the Tribal Council after ten (10) days notice to the licensee. The decision of the Tribal Council shall be final and no appeal therefrom allowed. The Tribal Council shall grant all persons in any hearing regarding violations, penalties, or license suspension or cancellations under this Ordinance all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. 1302 *et seq.* Notice of a Tribal Council hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entity(ies) at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with the Tribal Council retaining proof of service. The notice will set out the right of the alleged violator to be represented by counsel retained by the alleged violator the right to speak and present witnesses and to cross examine any witnesses against them.

611. *Possession of Liquor Contrary to This Liquor Ordinance.* Alcoholic beverages which are possessed contrary

to the terms of this Liquor Ordinance are declared to be contraband. Any Tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall have the authority to, and shall, seize all contraband.

612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of this Liquor Ordinance by the Tribal Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Chapter IX—Severability and Miscellaneous

901. *Severability.* If any provisions or application of this Liquor Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

902. *Prior Enactments.* Any and all prior ordinances, resolutions or enactments of the Tribal Council which are inconsistent with the provisions of this Liquor Ordinance are hereby rescinded.

903. *Conformance with Tribal State and Federal Law.* This Ordinance conforms with all tribal law and governing documents such as the Tribal Constitution. All provisions and transactions under this Ordinance shall be in conformity with California State law regarding alcohol to the extent required by 18 U.S.C. 1161 and with all federal laws regarding alcohol in Indian country.

904. *Enforcement.* All actions brought by the Tribal Council to enforce the provisions of this Ordinance shall be filed in the Tribal Court of the Coyote Valley Band of Pomo Indians or in an inter-tribal Court of competent jurisdiction. In the absence of a Tribal Court or Inter-tribal Court, said actions shall be filed in Federal court in the northern district of California. The Coyote Valley Band of Pomo Indians shall have exclusive jurisdiction if a Tribal Court is in place. If the Tribe is participating in an inter-tribal court and has no Tribal Court, the inter-tribal court shall have exclusive jurisdiction. If there is neither a Tribal Court or Inter-Tribal Court in which to file, then the Federal court in the northern district of California shall have exclusive jurisdiction.

905. *Effective Date.* This Liquor Ordinance shall be effective after the Secretary of Interior certifies the Ordinance and publishes it in the **Federal Register**.

Chapter X—Amendment

1001. *Amendment or Repeal.* This Ordinance may be amended or repealed by a majority vote of the Tribal Council at a properly held meeting. Amendments of this Ordinance need not be published in the **Federal Register** to become effective.

Chapter XI—Sovereign Immunity

1101. Nothing contained in this Liquor Ordinance is intended to nor does it in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Certification

The foregoing, Liquor Ordinance of the Coyote Valley Band of Pomo Indians, was introduced and adopted by the Coyote Valley Tribal Council on the 6th day of March 2003 at a regular meeting, at which a quorum was present, by the following vote: AYES—6; NOES—0; ABSTAIN—0.

Priscilla Hunter,

Chairwoman.

Attested:

Darlene Crabtree,

Secretary.

[FR Doc. 04–10531 Filed 5–7–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 9, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott Thomasson, Chief, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses:

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The Act restricts the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. The regulations provide that Federal firearms licensees may transfer these weapons to law enforcement agencies and law enforcement officers with proper documentation. This documentation is necessary for ATF to

ensure compliance with the law and to prevent the introduction of semiautomatic assault weapons into commercial channels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,107,000 respondents will provide the necessary documentation and maintain records for a total of 2 hours and 50 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 458,940 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 4, 2004.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 04–10502 Filed 5–7–04; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Clean Diesel IV

Notice is hereby given that, on April 6, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI"): Clean Diesel IV has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Aramco Services Company, Houston, TX; BorgWarner, Inc., Auburn Hills, MI; BP America Inc., La Palma, CA; Caterpillar, Inc., Mossville, IL; Corning Incorporated, Corning, NY; DAF Trucks, N.V., Eindhoven, NETHERLANDS; Delphi Automotive Systems, Troy, MI; Detroit Diesel Corporation, Detroit, MI; Eaton Corporation, Southfield, MI; Emitec, Inc., Auburn Hills, MI; ExxonMobil Corporation, Paulsboro, NJ; Ford Motor Company, Dearborn, MI; Hilite International, Inc., Cleveland, OH; Honeywell Turbocharging Systems, Torrance, CA; Hyundai Motor Company and Kia Motors Corporation, Gyunggi-Do, REPUBLIC OF KOREA; International Truck and Engine Company, Melrose Park, IL; Iveco Motorenforschung AG, Arbon, SWITZERLAND; Jacobs Vehicle Systems, Inc., Bloomfield, CT; John Deere Product Engineering Center, Deere and Company, Waterloo, IA; Nissan Technical Center North America, Inc., Farmington Hills, MI; Norstar Founders Group, Ltd., Causeway Bay, Hong Kong, HONG KONG-CHINA; Shell Global Solutions, Houston, TX; Senior Automotive, Bartlett, IL; USUI Kokusai Sangyo Kaisha, Ltd., Shizuoka-ken, JAPAN; and Volvo Powertrain, Cedex, FRANCE.

The purpose and nature of the venture is to achieve NO_X and HC levels of 0.2g/hp-hr, PM level of 0.01 g/hp-hr and NMHC of 0.14 g/hp-hr over the U.S. transient heavy-duty test cycle and develop pre-competitive diesel engine technology through the investigation of the following technologies: fuel economy, CO_2, specific engine power comparable to the best 2003 engines, diesel fuel with specifications representative of diesel fuel available in 2007, European and Japanese test cycles, off-highway and light-duty test cycles and, as appropriate for the light-duty engine, the program goal will be the equivalent of the US TIER–II standard.

Membership in this research group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–10490 Filed 5–7–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,698]

DePuy Casting, North Brunswick, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 9, 2004 in response to a petition filed by a company official on behalf of workers at DePuy Casting, North Brunswick, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of April 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1050 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Notice and Request for Information Regarding Forced/Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Office of the Secretary, Labor.

ACTION: Notice and request for information regarding forced child labor in the cocoa industry in Côte d'Ivoire.

SUMMARY: This notice sets forth and requests information regarding the status of a March 2001 submission, pursuant to Executive Order 13126 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor") and alleging the use of forced child labor in the cocoa industry in Côte d'Ivoire. The Department of Labor, in consultation and cooperation with the Departments of Homeland Security, Treasury and State, has decided to continue monitoring the production of cocoa in Côte d'Ivoire to determine whether there is use of forced or indentured child labor in the industry and, accordingly, whether this country/product should be added to the list of products prohibited from acquisition under Executive Order 13126. This notice also requests additional information to assist the Departments of Labor, State and Treasury in making a determination on forced child labor in the cocoa industry in Côte d'Ivoire. The review of this country/product is being conducted pursuant to Executive Order 13126 and the Department's "Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor."

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the International Child Labor Program by June 9, 2004.

ADDRESSES: Written submissions should be addressed to Christine Camillo at the

International Child Labor Program, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5307, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christine Camillo, International Child Labor Program, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4843; fax (202) 693–4830.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was "the policy of the United States Government * * * that executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor." Pursuant to the Executive Order, and following public notice and comment, the Department of Labor (DOL) published in the January 18, 2001, **Federal Register** (66 FR 5353), a final list of products, identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury, had a reasonable basis to believe might have been mined, produced, or manufactured with forced or indentured child labor. In addition to this list, DOL also published on January 18, 2001, a notice of procedural guidelines for maintaining, reviewing, and, as appropriate, revising the list of products required by Executive Order 13126. (66 FF 5351). The list of products can be accessed on the Internet at *http://www.dol.gov/ilab* or can be obtained from: International Child Labor Program, Bureau of International Labor Affairs, Room S–5307, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830. A copy of the "Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (Procedural Guideline)" is also available from this office.

Pursuant to section 3 of the Executive Order, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001 (66 FR 5346), providing that Federal contractors who supply products that appear on the list issued by DOL must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. (48 CFR subpart 22.15). The regulation also imposes other requirements with respect to contracts for goods on the list of products.

II. Côte d'Ivoire/Cocoa Executive Order Submission

On March 20, 2001, DOL accepted for review a videotape submission, provided by Kevin Bales of Anti-Slavery International, under Executive Order 13126, describing conditions of forced child labor in the cocoa industry in Côte d'Ivoire. In accordance with the Procedural Guidelines, DOL initiated a review into whether forced or indentured child labor is used in the production of this good in Côte d'Ivoire and has consulted with the Departments of Homeland Security (DHS), Treasury and State regarding this issue. DOL has included DHS in its interagency consultations for Executive Order submissions, since this agency now has responsibility for enforcing the forced labor provisions of the Tariff Act (previously enforced by the U.S. Treasury Department).

III. Sources of Information & Factors Considered in the Review Process

In conducting its review of this submission, DOL has sought and reviewed information on Côte d'Ivoire cocoa from a variety of sources, including the Department of Labor's 2002 Findings on the Worst Forms of Child Labor, the State Department's annual Country Reports on Human Rights Practices—2003: Côte d'Ivoire and Trafficking in Persons Report, 2003, the International Institute for Tropical Agriculture's 2002 Child Labor Surveys in the Cocoa Sector of West Africa synthesis report, as well as numerous other governmental and nongovernmental organization reports, articles and stories describing conditions of forced child labor in the Côte d'Ivoire cocoa industry.

In reviewing this information, the Departments of Labor, State, Treasury and Homeland Security have considered several factors: The nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; and whether the information involved more than an isolated incident. In addition, DOL has sought evidence of recent, credible efforts being made to address forced or indentured child labor in Côte d'Ivoire by the Ivorian government.

IV. Evidence of Forced Child Labor in Côte d'Ivoire Cocoa Industry

DOL has received reports that thousands of children work on cocoa farms in Côte d'Ivoire, most alongside their families. These children are allegedly engaged in tasks/activities such as clearing fields; weeding; maintaining cocoa trees; fermenting; transporting; and drying as well as particularly hazardous tasks, such as spraying pesticides on cocoa without protection, using machetes to clear undergrowth and carrying heavy loads.

In addition to children working alongside their families in cocoa production, some children have allegedly been trafficked within Côte d'Ivoire and into the country from Benin, Burkina Faso, Ghana, Mali, Mauritania, Nigeria, and Togo to work on commercial cocoa farms. Children working as forced labor on these farms describe being deceived, coerced, and threatened by adult intermediaries and employers; working between 10–20 hours per day with few or no breaks under hazardous conditions; and being confined to locked rooms at night and unable to leave their place of work. They also describe being: denied pay or provided with inadequate compensation; required to work without food or drink; subject to physical abuse and mental abuse; and prohibited from attending school.

V. Enforcement of Child Labor Laws and Enforcement in the Cocoa Sector in Côte d'Ivoire

Côte d'Ivoire's Labor Code sets the minimum age for employment at 14 years, even for apprenticeships, and prohibits children under 18 years from working more than 12 consecutive hours a day. The Labor Code also prohibits forced or compulsory labor, and Decree No. 67–265 sets the minimum age for hazardous work at 18 years. There is no law specifically prohibiting trafficking in persons, although one is pending in the National Assembly.

Child labor laws in Côte d'Ivoire apply to all sectors and industries in the country, but minimum age laws are enforced by the Ministry of Employment and Civil Service only in the civil service and in large multinational companies. In 2003, the government continued to combat trafficking, but there were no reports that the government prosecuted traffickers using

existing laws against the kidnapping of children. The government's engagement in the country's ongoing civil conflict has impeded enforcement of child labor and anti-trafficking laws since September 2002.

VI. Recent Government Efforts To Address the Child Labor Problem in the Cocoa Industry

The Government of Côte d'Ivoire has acknowledged the problem of child labor in the cocoa industry and made some recent, credible efforts to address this issue. In September 2000, the Governments of Côte d'Ivoire and Mali signed a bilateral agreement to curb the trafficking of Malian children into Côte d'Ivoire and have worked together since then to prevent cross-border trafficking and repatriate child victims. In 2001, the government began participating in a $4.3 DOL-funded regional project funded through the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC) to combat the trafficking of children for exploitive labor in West and Central Africa. In 2002, the government agreed to participate in a second $5 million DOL-funded ILO–IPEC project to combat the use of children in hazardous work in the cocoa sector. That same year, in collaboration with INTERPOL, the Government of Côte d'Ivoire organized a meeting with neighboring countries in West and Central Africa, and several United Nations agencies and nongovernmental organizations, to discuss child trafficking in the region. In the resulting Yamoussoukro Declaration, the meeting participants pledged to conduct coordinated information campaigns on child trafficking. The government has implemented a National Development Plan for Education that calls for universal primary education by 2010 and in 2002, distributed free textbooks to 1.2 million students. In April 2004, the government conducted a workshop on child labor in the cocoa industry and considered anti-trafficking legislation.

VII. Status of the Review of the Côte d'Ivoire/Cocoa Submission

Although the Government of Côte d'Ivoire has made some recent, credible efforts to address forced child labor in the cocoa sector, the Departments of Labor, State, Treasury and Homeland Security remain concerned about this problem and about the lack of an adequate legal framework to address forced child labor in the non-industrial farm sector. For this reason, the Departments have decided to continue to keep this Executive Order submission under review in order to monitor the government's efforts to address the forced child labor problem in the cocoa industry during the next six months. At the end of this period, the Departments will determine whether the Government of Côte d'Ivoire has taken significant, credible steps to consider the adoption of new anti-trafficking legislation and has made efforts to enforce its laws prohibiting child labor, including forced child labor where it is occurring in the cocoa sector.

VIII. Information Sought

DOL is requesting current information about the nature and extent of forced child labor in the cocoa industry in Côte d'Ivoire as well as efforts made by the Government of Côte d'Ivoire to address this problem.

This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the record of the review referred to above and will be available for public inspection.

Signed in Washington, DC this 5th day of May, 2004.

Arnold Levine,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. E4–1047 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,538 and TA–W–53,538A]

Allegheny Ludlum Corporation, Brackenridge Works, Brackenridge, PA and Allegheny Ludlum Corporation, Leechburg Works, Leechburg, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Allegheny Ludlum Corporation, Brackenridge Works, Brackenridge, Pennsylvania and Allegheny Ludlum Corporation, Leechburg Works, Leechburg, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,538; Allegheny Ludlum Corporation, Brackenridge Works, Brackenridge, Pennsylvania

TA–W–53,538A; Allegheny Ludlum Corporation, Leechburg Works, Leechburg, Pennsylvania (April 28, 2004).

Signed at Washington, DC, this 3rd day of May 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–1056 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,382]

Capital Mercury Apparel, Ltd, Mar-Bax Shirt Company Division, Ark Management Consultants, Gassville, AR; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 22, 2003, applicable to workers of Capital Mercury Apparel, Ltd, Mar-Bax Shirt Company Division, Gassville, Arkansas. The notice was published in the **Federal Register** on September 17, 2003 (68 FR 54498).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's woven dress and sports shirts.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Ark Management Consultants.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Capital Mercury Apparel, Ltd, Mar-Bax Shirt Company Division, Ark Management Consultants, Gassville, Arkansas, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA-W–52,382 is hereby issued as follows:

All workers of Capital Mercury Apparel, Ltd., Mar-Bax Shirt Company Division, Ark Management Consultants, Gassville, Arkansas, who became totally or partially separated from employment on or after July 23, 2002, through August 22, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 16th day of April 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1058 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,988 and TA–W–53,988A]

Coperion Corporation, Ramsey, NJ, Coperion Corporation, Carol Stream, IL; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 14, 2004, applicable to workers of Coperion Corporation. Ramsey, New Jersey. The notice was published in the **Federal Register** on February 6, 2004 (69 FR 5867).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of extrusion equipment.

New findings show that worker separations occurred at the Carol Stream, Illinois facility of the subject firm. Workers at the Carol Stream, Illinois facility provide sales function services supporting the production of extrusion equipment at the Ramsey, New Jersey location of the subject firm

Accordingly, the Department is amending the certification to cover workers at Coperion Corporation, Carol Stream, Illinois.

The intent of the Department's certification is to include all workers of Coperion Corporation who were adversely affected by increased imports.

The amended notice applicable to TA-W–53,988 is hereby issued as follows:

All workers of Coperion Corporation, Ramsey, New Jersey (TA–W–53,988) and Coperion Corporation, Carol Stream, Illinois (TA–W–53,988A), who became totally or partially separated from employment on or after January 5, 2003, through January 14, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of April, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1064 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,548]

Eli Group, Providence, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 18, 2004 in response to a petition filed by on behalf of workers at Eli Group, Providence, Rhode Island.

The petition was not submitted by a company official, union official, State agency representative, or worker group, and is therefore invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC this 23rd day of April 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1054 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,082]

Fountain Construction Company, Inc., Assembly Board Tooling Division, Jackson, MS; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of March 22, 2004, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on March 8, 2004. The notice was published in the **Federal Register** on April 6, 2004 (69 FR 18109). The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 23rd day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1063 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 20, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 20, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200

Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of April, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 04/19/2004 and 04/23/2004

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,737	General Electric (USWA)	Coshocton, OH	04/19/2004	03/31/2004
54,738	Morrill Motors, Inc. (Comp)	Sneedville, TN	04/19/2004	04/16/2004
54,739	Bosch Automotive Group (Wkrs)	St. Joe, MI	04/19/2004	04/06/2004
54,740	Weyerhaeuser Cosmopolis (IAM)	Cosmopolis, WA	04/19/2004	04/16/2004
54,741	Bacon Felt Co. (Comp)	Taunton, MA	04/19/2004	04/13/2004
54,742	Competitive Machining, Inc. (MI)	Standish, MI	04/19/2004	04/15/2004
54,743	Acme Pad Corp. (Wkrs)	Baltimore, MD	04/19/2004	04/15/2004
54,744	Kroger Accounting (Wkrs)	Nashville, TN	04/19/2004	04/01/2004
54,745	Chart Storage Systems Division	Plaistow, NH	04/19/2004	04/02/2004
54,746	Eureka Security Printing Co. (Wkrs.)	Jessup, PA	04/20/2004	03/23/2004
54,747	Kyocera America, Inc. (OR)	Beaverton, OR	04/20/2004	04/08/2004
54,748	FMC Corporation (MD)	Baltimore, MD	04/20/2004	04/19/2004
54,749	Fellowes, Inc. (MD)	Belcamp, MD	04/20/2004	04/19/2004
54,750	Stearns Technical (UNITE)	Cincinnati, OH	04/20/2004	04/19/2004
54,751	Trilux Technologies (NC)	Winston-Salem, NC	04/20/2004	04/12/2004
54,752	Bausch and Lomb (Comp)	Salt Lake City, UT	04/21/2004	04/20/2004
54,753	American of Martinsville (Comp)	Martinsville, VA	04/21/2004	04/19/2004
54,754	M. Stephens Mfg. Co. (CA)	Cudahy, CA	04/21/2004	04/14/04
54,755	Textile Sales and Repair, Inc. (Comp)	Dallas, NC	04/21/2004	04/15/2004
54,756	Stature Electric, Inc. (Wkrs)	Watertown, NY	04/21/2004	04/13/2004
54,757	Vac Magnetics Corporation (Comp)	Elizabethtown, KY	04/21/2004	04/14/2004
54,758	Technical Associates (Comp)	Macon, GA	04/21/2004	03/18/2004
54,759	Seacraft Instruments, Inc. (Wkrs)	Batavia, NY	04/21/2004	03/16/2004
54,760	SNC Manufacturing Co., Inc. (UAW)	Oshkosh, WI	04/21/2004	04/19/2004
54,761	Detroit Diesel (UAW)	Detroit, MI	04/21/2004	04/19/2004
54,762	IntelliRisk Management, Inc. (Wkrs)	Cedar Falls, IA	04/21/2004	04/20/2004
54,763	Peterson Spring Corp. (IL)	Greenville, IL	04/22/2004	04/21/2004
54,764	GE Commerical Distribution Finance (Comp)	St. Louis, MO	04/22/2004	04/19/2004
54,765	Oxy-Dry Corporation (Comp)	Iasca, IL	04/22/2004	04/08/2004
54,766	Dearden Iron Works (MA)	Chicopee, MA	04/22/2004	04/21/2004
54,767	International Wire (Wkrs)	El Paso, TX	04/22/2004	04/15/2004
54,768	Crystal Springs Apparel, LLC (Comp)	Crystal Springs, MS	04/22/2004	04/21/2004
54,769	Takata Petri, Inc. (Comp)	Port Huron, MI	04/22/2004	04/22/2004
54,770	Motorola (FL)	Boynton, FL	04/23/2004	04/23/2004
54,771	Penn Traffic Corp. (The) (NY)	Syracuse, NY	04/23/2004	04/23/2004
54,772	Metzler Automotive Profile Systems (Wkrs)	Keokuk, IA	04/23/2004	04/19/2004
54,773	Inovis, Inc. (Wkrs)	Northville, MI	04/23/2004	04/08/2004
54,774	T and W Tool and Die Corp. (Comp)	Oak Park, MI	04/23/2004	04/14/2004
54,775	Avondale Mills (Wkrs)	Monroe, GA	04/23/2004	04/23/2004
54,776	Jefferson Mills, Inc. (Comp)	Pulaski, VA	04/23/2004	04/21/2004

[FR Doc. 04–10542 Filed 5–7–04; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,861]

Intermet, Radford Foundry, Radford, Virginia; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 9, 2004, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on November 19, 2003 and published in the **Federal Register** on April 6, 2004 (69 FR 18109).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Intermet, Radford Foundry, Radford, Virginia engaged in the production of camshafts, reaction shafts and transmission components were denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974 was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers

regarding their purchases of camshafts, reaction shafts and transmission components during 2001, 2002 and January through September of 2003. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of camshafts, reaction shafts and transmission components during the relevant period, nor did it shift production to a foreign source.

The petitioner alleges that the layoffs at the subject firm are attributable to a shift in production to foreign countries.

A review of the initial investigation and a further contact with a company official confirmed that Intermet, Radford Foundry, Radford, Virginia did plan a shift of production from Radford, Virginia facility to Mexico in the second quarter of 2004, after the relevant time period. The company official further indicated that no production has been moved from Radford Foundry to Mexico as of February 19, 2004, and no time line was given to when this will happen.

Should the shift to Mexico occur, the petitioners are encouraged to file a new petition on behalf of workers at the Intermet, Radford Foundry, Radford, Virginia, thereby creating a relevant period of investigation that would include changing conditions.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of April 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1057 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,338]

Loftin Black Furniture Company, Thomasville, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Loftin Black Furniture Company, Thomasville, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,338; Loftin Black Furniture Company, Thomasville, North Carolina (April 28, 2004).

Signed in Washington, DC this 3rd day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–1061 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,415]

MCS Industries, Somerset, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 2004, applicable to workers of MCS Industries, Somerset, New Jersey. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of photo albums and photo boxes.

Information shows that the New Jersey Department of Labor requested Alternative Trade Adjustment Assistance (ATAA) on behalf of the workers of the subject firm but that request was not addressed in the decision document.

Information obtained from the company states that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse. Review of this information shows that all eligibility criteria under section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met. Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–54,415 is hereby issued as follows:

All workers of MCS Industries, Somerset, New Jersey, who became totally or partially separated from employment on or after March 2, 2003, through March 25, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 29th day of April, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1059 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,654]

Medtronic Vascular, Danvers, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 2, 2004, in response to a petition filed by a company official on behalf of workers at Medtronic Vascular, Danvers Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 19th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1052 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,495]

Milliken & Company, Spartanburg, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 12, 2004, in response to a petition filed on behalf of workers at Milliken & Company, Spartanburg, South Carolina.

The petition has been deemed invalid. The petition was filed by workers that were employed in separately identifiable business divisions of the firm. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 21st day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1055 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,689]

OWT Industries, Inc., Power Tool Operations, Pickens, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 8, 2004 in response to a petition filed by a company official on behalf of workers at OWT Industries, Inc., Power Tool Operations, Pickens, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 23rd day of April 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1051 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,404]

Plains Cotton Cooperative Association, Mission Valley Fabrics Division, New Braunfels, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 6, 2004, applicable to workers of Plains Cotton Cooperative Association, New Braunfels, Texas. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66879).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of denim fabric.

New findings show that there was a previous certification, TA–W–39,539, issued on January 15, 2002, for workers of Mission Valley Fabrics, New Braunfels, Texas who were engaged in employment related to the production of denim fabric. That certification expired on January 15, 2004. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from February 25, 2003, to January 16, 2004, for workers of the subject firm.

The certification was amended on February 4, 2002, to show that workers wages were reported under a separate unemployment insurance (UI) tax account for Plains Cotton Cooperative Association.

The amended notice applicable to TA–W–54,404 is hereby issued as follows:

All workers of Plains Cotton Cooperative Association, Mission Valley Fabrics Division, New Braunfels, Texas, who became totally or partially separated from employment on or after January 16, 2004, through April 6, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 29th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1060 Filed 5–7–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistant, at the address shown below, not later than May 20, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 20, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of April, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 04/05/2004 and 04/09/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,657	Sterling and Adams Bentwood (Comp)	Thomasville, NC	04/05/2004	03/22/2004
54,658	Whiting Manufacturing Co (Comp)	Hazel Green, KY	04/05/2004	04/01/2004
54,659	Sara Lee Branded Apparel-USC (VA)	Martinsville, VA	04/05/2004	03/22/2004
54,660	Rotary International (Wkrs)	Evanston, IL	04/05/2004	04/01/2004
54,661	Gordon Garment Company (Comp)	Bristol, VA	04/05/2004	03/23/2004
54,662	Altek, Inc. (Comp)	Liberty Lake, WA	04/05/2004	04/01/2004

APPENDIX—Continued

[Petitions instituted between 04/05/2004 and 04/09/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,663	New Castle Battery Mfg. Co. (Wkrs)	New Castle, PA	04/05/2004	04/02/2004
54,664	Slarama, Inc., (Comp)	New Bedford, MA	04/05/2004	04/01/2004
54,665	Iomega Corporation (Comp)	Roy, UT	04/05/2004	03/26/2004
54,666	TDK Electronics Corp. (Comp)	Anaheim, CA	04/05/2004	03/31/2004
54,667	Terra Nitrogen Corp. (AR)	Blytheville, AR	04/05/2004	04/02/2004
54,668	Damy Industries (Comp)	Athens, TN	04/06/2004	03/30/2004
54,669	American Meter Company (Comp)	Erie, PA	04/06/2004	04/02/2004
54,670	Pioneer Americas (USWA)	Henderson, NV	04/06/2004	03/30/2004
54,671	Steelcase, Inc. (Comp)	New Paris, IN	04/06/2004	04/05/2004
54,672	Robert Bosch Tool Corp. (Comp)	Leitchfield, KY	04/06/2004	03/29/2004
54,673	Baronet Litho, Inc. (Comp)	Johnston, NY	04/06/2004	03/11/2004
54,674	Major League, Inc. (Comp)	Mount Airy, NC	04/06/2004	03/24/2004
54,675	Royal Vendors (Wkrs)	Kearneysville, WV	04/06/2004	03/15/2004
54,676	Otis Elevator (IUE)	Bloomington, IN	04/06/2004	03/26/2004
54,677	Whiting Manufacturing Co. (USWA)	East Butler, PA	04/06/2004	03/31/2004
54,678	C and L Custom Tooling (Comp)	Clackamas, OR	04/06/2004	03/30/2004
54,679	Magnum Plastics (CO)	Erie, CO	04/07/2004	04/06/2004
54,680	Grand Valley Manufacturing (Wkrs)	Titusville, PA	04/07/2004	03/24/2004
54,681	5 B's Inc. (Comp)	Barnesville, OH	04/07/2004	04/06/2004
54,682	Sony Electronics (Wkrs)	Mt. Pleasant, PA	04/07/2004	03/31/2004
54,683	USA Knit, Inc. (Comp)	Ft. Payne, AL	04/07/2004	04/05/2004
54,684	Keane, Inc. (Comp)	Montpelier, VT	04/07/2004	03/31/2004
54,685	Amerex Corp. (NJ)	Scotch Plaines, NJ	04/07/2004	04/06/2004
54,686	L and L Knitting (Comp)	Fort Payne, AL	04/07/2004	04/06/2004
54,687	Rehau, Inc. (Comp)	Springfield, VT	04/07/2004	04/01/2004
54,688	Jabil Circuit, Inc. (MI)	Auburn Hills, MI	04/08/2004	04/01/2004
54,689	OWT Industries, Inc. (Comp)	Pickens, SC	04/08/2004	04/01/2004
54,690	Siemens Dematic (Wkrs)	Grand Rapids, MI	04/08/2004	04/01/2004
54,691	Rags, Inc. (Wkrs)	Albemarle, NC	04/08/2004	03/31/2004
54,692	Bank of New York (The) (Wkrs)	New York, NY	04/08/2004	03/31/2004
54,693	ITW Chemtronics (Wkrs)	Kennasaw, GA	04/08/2004	04/07/2004
54,694	Hewlett Packard (CA)	Cupertino, CA	04/08/2004	04/02/2004
54,695	C-Cor.net (Wkrs)	Meriden, CT	04/08/2004	02/27/2004
54,696	New Frontier Clothing Co. (Comp)	Dallas, TX	04/08/2004	02/10/2004
54,697	Plastic Molding Technology (CT)	Seymour, CT	04/09/2004	04/08/2004
54,698	Deput Casting (Comp)	N. Brunswick, NJ	04/09/2004	04/08/2004
54,699	Coyuchi, Inc. (Comp)	Piedmont, SC	04/09/2004	03/26/2004
54,700	Detriot Tool and Engineering (Wkrs)	Lebanon, MO	04/09/2004	04/07/2004
54,701	Viratec Thin Films (Comp)	Faribault, MN	04/09/2004	04/07/2004
54,702	Travelocity (Wkrs)	Clintwood, VA	04/09/2004	04/02/2004
54,703	Standard Steel, LLC (Wkrs)	Latrobe, PA	04/09/2004	04/08/2004
	Petitions Instituted Between 04/12/2004 and 04/16/2004			
54,704	West Telemarketing Outbound (State)	Fort Smith, AR	04/12/2004	04/09/2004
54,705	Ozark Iron Works (State)	Calico Rock, AR	04/12/2004	04/09/2004
54,706	Kardex Systems Inc. (Comp)	Reno, OH	04/12/2004	04/02/2004
54,707	Quincy Products (Wkrs.)	Quincy, MI	04/12/2004	04/08/2004
54,708	Novellus System Inc. (Wkrs.)	San Jose, CA	04/12/2004	03/30/2004
54,709	Summitville Tiles, Inc. (Comp)	Minerva, OH	04/13/2004	04/13/2004
54,710	Veltri Metal Products, Inc. (Comp)	Celina, TN	04/13/2004	04/12/2004
54,711	Stocker Yale (Wkrs)	Salem, NH	04/13/2004	04/12/2004
54,712	Germainhardt Co., Inc. (IBT)	Elkhart, IN	04/13/2004	04/12/2004
54,713	Indiana Die Molding, LLC (Comp)	Ft. Wayne, IN	04/13/2004	04/08/2004
54,714	CarboMinerals LP (Wkrs)	Wrightstown, WI	04/13/2004	03/31/2004
54,715	Goodrich Aviation Technical Services (Wkrs)	Everett, WA	04/13/2004	04/08/2004
54,716	Kellogg Crankshaft (UAW)	Jackson, MI	04/14/2004	04/06/2004
54,717	Harris Interactive (Wkrs)	Rochester, NY	04/14/2004	04/02/2004
54,718	Yazoo Industries (Comp)	Yazoo City, MS	04/14/2004	04/07/2004
54,719	Shafer Electronics Co. (MN)	Shafer, MN	04/14/2004	04/12/2004
54,720	Texon USA (MA)	Russell, MA	04/14/2004	04/12/2004
54,721	Sulzer Process Pumps (Wkrs)	Easley, SC	04/14/2004	03/18/2004
54,722	Stefanie Fashions (NJ)	Jersey City, NJ	04/15/2004	04/14/2004
54,723	Somerset Consolidated Industries (Wkrs)	New Castle, PA	04/15/2004	04/14/2004
54,724	All About Lollipops, Inc. (Wkrs)	Boise, ID	04/15/2004	04/09/2004
54,725	Pristech Products (04/12/)	San Antonio, TX	04/15/2004	04/12/2004
54,726	Sanford Business to Business (USWA)	Janesville, WI	04/15/2004	04/14/2004
54,727	Tyco Healthcare Kendall (USWA)	Argyle, NY	04/15/2004	04/14/2004
54,728	Weiser Lock Division of Black and Decker (Comp).	Tucson, AZ	04/16/2004	03/18/2004
54,729	Piedmont Industries (Wkrs)	Hickory, NC	04/16/2004	04/08/2004

APPENDIX—Continued

[Petitions instituted between 04/05/2004 and 04/09/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,730	Manpower (IA)	Clinton, IA	04/16/2004	04/15/2004
54,731	Tecumseh Products (Wkrs)	Verona, MS	04/16/2004	04/14/2004
54,732	MCI (Wkrs)	Niles, OH	04/16/2004	04/14/2004
54,733	Bridges Hosiery Mill (Wkrs)	Hildebran, NC	04/16/2004	03/23/2004
54,734	RR Donnelley (Comp)	Portland, OR	04/16/2004	04/15/2004
54,735	Trent Tube (Comp)	Carrollton, GA	04/16/2004	04/15/2004
54,736	Tee Lays Mfg. Co., Inc. (Comp)	Florence, AL	04/16/2004	04/15/2004

[FR Doc. 04–10543 Filed 5–7–04; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,652]

Tanya Creations, Inc., East Providence, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 2, 2004, in response to a petition filed by a company official on behalf of workers at Tanya Creations, Inc., East Providence, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 23rd day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1053 Filed 5–7–04; 8:45 am]
BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,243]

Tateishi of America, Inc., Pineville, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tateishi of America, Inc., Pineville, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,243; Tateishi of America, Inc., Pineville, North Carolina (April 28, 2004).

Signed in Washington, DC this 3rd day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–1062 Filed 5–7–04; 8:45 am]
BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,751]

Trilux Technologies, Inc., Winston-Salem, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 20, 2004 in response to a worker petition filed on behalf of workers of Trilux Technologies, Inc., Winston-Salem, North Carolina.

The petition has been deemed invalid because it was not signed by three workers. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of April 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–1049 Filed 5–7–04; 8:45 am]
BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,973]

Warner Electric, Inc., a Subsidiary of Colfax Corporation, Roscoe, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Warner Electric, Inc., a subsidiary of Colfax Corporation, Roscoe, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,973; Warner Electric, Inc., a subsidiary of Colfax Corporation, Roscoe, Illinois (April 28, 2004).

Signed in Washington, DC this 3rd day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–1065 Filed 5–7–04; 8:45 am]
BILLING CODE 4510–13–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Tucson Basin Recreational Shooting Workshop #1

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice of meeting.

Authority: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609.

SUMMARY: The U.S. Institute for Environmental Conflict Resolution will convene a public meeting on Saturday, May 22, 2004, at the Doubletree Hotel at Reid Park, 445 S. Alvernon Way, Tucson, Arizona 85711. The meeting will occur from 1 p.m. to approximately 5 p.m.

Members of the public are invited to attend however, seating is limited and available on a first-come, first-served basis. During this meeting, working groups comprised of Federal, State and local agency and stakeholder representatives will discuss the following: (1) Issues relating to locations for recreational shooting; (2) Safety and

enforcement issues; (3) Resource impacts; (4) Education. The meeting will emphasize a problem-solving approach, using a range of practical tools and exercises such as shared history, mapping, and joint fact-finding in order to solicit information and further clarify and address the issues related to recreational shooting in the Tucson Basin.

Background

In 2003, the Tucson Field Office of the Bureau of Land Management (BLM), in the process of developing a management plan for the Ironwood Forest National Monument, requested that the U.S. Institute for Environmental Conflict Resolution conduct a situation assessment on issues related to recreational shooting. Safety concerns and resource damage were identified as significant concerns in the Monument, and the assessment was viewed as an important means to gain an understanding of public attitudes and perceived opportunities for addressing these issues.

At the outset, BLM staff underscored their mandate to manage the Monument for multiple uses, with recreational shooting being one among many appropriate public uses within the Monument.

The BLM perceived a need to bring agencies and stakeholders together to consider developing appropriate management guidelines. Believing that issues around recreational shooting could not be adequately addressed without taking a basin-wide approach, BLM staff sought to identify opportunities to work with a wide array of stakeholders to define a common vision for resolving these resource management and public safety issues. The BLM provided the initial funding for the situation assessment. However, in the early stages of development of the project, the USDA Forest Service's Coronado National Forest and the Arizona Game and Fish Department joined as co-sponsors, confirming the importance of looking at the situation in the Tucson basin as a whole.

All three agencies are now supporting a series of public workshops to explore the issues identified in the situation assessment. Workshop #1 is the first in that series. Dates have not yet been established for subsequent workshops.

In the initial planning for the situation assessment, the sponsors determined that the project would specifically address "recreational shooting," defined as the discharge of any firearm for any lawful, recreational purpose other than the lawful taking of a game animal. They separated this activity from hunting, which the project was not intended to address.

FOR FURTHER INFORMATION: Any member of the public who desires further information concerning the meeting or wishes to submit oral or written comments should contact Olivia Montes, Administrative Assistant, U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Avenue, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *montes@ecr.gov*. Requests to make oral comments must be in writing (or by e-mail) to Ms. Montes and be received no later than 5 p.m. Mountain Standard Time on Friday, May 14, 2004. Copies of the draft meeting agenda may be obtained from Ms. Montes at the address, phone and e-mail address listed above.

A copy of the situation assessment "Recreational Shooting in the Tucson Basin: The Potential for Collaborative Dialogue and Action" can be obtained at *http://www.ecr.gov/s_publications.htm#Tucson_Basin*

Dated: May 4, 2004.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 04–10525 Filed 5–7–04; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (04–061)]

Notice; Correction

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: In the **Federal Register** issue of Wednesday, April 21, 2004 (Volume 69, No. 77), pg. 2183–2184, Notice [04–051], make the following corrections: "Dates: All comments should be submitted within 60 calendar days of the date of this publication." should read "Dates: All comments should be submitted within 30 calendar dates of the date of this publication;" and "Addresses: All comments should be addressed to Ms. Nancy Kaplan, Code VE, National Aeronautics and Space Administration, Washington, DC, 20546–0001." should read "Addresses: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503."

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Organizational Climate Survey for NASA Marshall Space Flight Center.

OMB Number: 2700–XXXX.

Type of review: New collection.

Dated: April 29, 2004.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04–10544 Filed 5–7–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 327, Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report, and NUREG/BR–0096, Instructions and Guidance for Completing Physical Inventory Summary Reports

2. *Current OMB approval number:* 3150–0139.

3. *How often the collection is required:* The frequency of reporting corresponds to the frequency of required inventories, which depends essentially on the strategic significance of the SNM covered by the particular license. Certain licensees possessing strategic SNM are required to report inventories every 2 months. Licensees possessing SNM of moderate strategic significance must report every 6 months. Licensees possessing SNM of low strategic significance must report annually.

4. *Who is required or asked to report:* Fuel facility licensees possessing special nuclear material.

5. *The number of annual respondents:* 10.

6. *The number of hours needed annually to complete the requirement or request:* 98 hours (an average of approximately 4.25 hours per response for 23 responses).

7. *Abstract:* NRC Form 327 is submitted by fuel facility licensees to account for special nuclear material. The data is used by NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) special nuclear material theft or diversion. NUREG/BR–0096 provides specific guidance and instructions for completing the form in accordance with the requirements appropriate for a particular licensee.

Submit, by July 9, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of May 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–10518 Filed 5–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–04783]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment For the Dow Chemical Company, Midland, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: William Snell, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532; telephone (630) 829–9871; or by e-mail at *wgs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Material License No. 21–00265–06 issued to Dow Chemical Company (the licensee), to remove the 703 Incinerator from its license at its Midland, Michigan facilities, and release the incinerator for unrestricted use.

The NRC staff has prepared this environmental assessment (EA) to support this licensing action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to remove the 703 Incinerator from Byproduct Material License No. 21–00265–06, issued to the Dow Chemical Company in Midland, Michigan, and release the licensee's 703 Incinerator for unrestricted use. The 703 Incinerator had been used since 1959 to incinerate hazardous wastes and had been used since 1966 to incinerate materials containing small quantities of hydrogen-3 (H–3) and carbon-14 (C–14). On January 9, 2004, Dow Chemical Company submitted a request to remove the 703 Incinerator from its license at its Midland, Michigan facilities, and release the incinerator for unrestricted use. Dow Chemical Company provided survey results which demonstrated that the 703 Incinerator was in compliance with Title 10, Code of Federal Regulations, 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." No radiological remediation activities are required to complete the proposed action. The NRC staff has reviewed the information provided and surveys performed by Dow Chemical Company to demonstrate compliance with the license termination criteria in Subpart E of 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use," to ensure the NRC's decision is protective of public health and safety and the environment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Dow Chemical Company's proposed license amendment to terminate its license and release the 703 Incinerator for unrestricted use. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the decommissioning of Dow Chemical Company's facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). Additionally, no non-radiological impacts were identified. The staff also finds that the proposed release for unrestricted use of the Dow Chemical Company's facilities is in compliance with 10 CFR 20.1402, and finds no other activities in the area that could result in cumulative impacts. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," Dow Chemical Company's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* These documents include Dow Chemical Company's letter dated January 9, 2004, with enclosures (Accession No. ML041200347); and the EA summarized above (Accession No. ML041210129). These documents may also be viewed electronically on the public computers

located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Lisle, Illinois, this 30th day of April 2004.

George M. McCann,

Acting Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–10515 Filed 5–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–01672]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the Fort Wayne State Developmental Center, Fort Wayne, IN

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: William Snell, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532; telephone (630) 829–9871; or by e-mail at *wgs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Material License No. 13–13530–01 issued to Fort Wayne State Developmental Center (the licensee), to terminate its license and release the licensee's Fort Wayne, Indiana facilities for unrestricted use.

The NRC staff has prepared this environmental assessment (EA) to support this licensing action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to terminate the Fort Wayne State Developmental Center's license and release the licensee's facilities in Fort Wayne, Indiana, for unrestricted use. The NRC licensed Fort Wayne State Developmental Center for in-vitro studies and tracer experiments in laboratory animals using hydrogen-3 (H–3), carbon-14 (C–14), phosphorus (P–32), and any byproduct material listed in Section 31.11(a) of 10 CFR Part 31. On October 9, 2003, Fort Wayne State Developmental Center submitted a request to terminate its license at its Fort Wayne, Indiana facilities, and release the facilities for unrestricted use. Fort Wayne State Developmental Center provided survey results which demonstrated that the facilities were in compliance with Title 10, Code of Federal Regulations, 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." No radiological remediation activities are required to complete the proposed action. The NRC staff has reviewed the information provided and surveys performed by Fort Wayne State Developmental Center to demonstrate compliance with the license termination criteria in Subpart E of 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use," to ensure the NRC's decision is protective of public health and safety and the environment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Fort Wayne State Developmental Center's proposed license amendment to terminate its license and release the Fort Wayne, Indiana facilities for unrestricted use. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the decommissioning of Fort Wayne State Developmental Center's facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). Additionally, no non-radiological impacts were identified. The staff also finds that the proposed release for unrestricted use of the Fort Wayne State Developmental Center's facilities is in compliance with 10 CFR 20.1402, and finds no other activities in the area that could result in cumulative impacts. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," Fort Wayne State Developmental Center's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents include Fort Wayne State Developmental Center's letter dated October 9, 2003, with enclosures (Accession No. ML040620687); and the EA summarized above (Accession No. ML041190657). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Lisle, Illinois, this 30th day of April 2004.

George M. McCann,

Acting Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–10516 Filed 5–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–34325]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Release of Facility for Unrestricted Use for the Department of Veterans Affairs Medical Center, Bath, NY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: William Snell, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532; telephone (630) 829–9871; or by e-mail at *wgs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the release of the Department of Veterans Affairs (DVA) Medical Center in Bath, New York, for unrestricted use.

The NRC staff has prepared this environmental assessment (EA) to support this licensing action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to release the DVA Medical Center in Bath, New York, for unrestricted use. Although the Bath, New York facility is not a permittee under the DVA NRC Master Material License (MML) Number 03–23853–01VA, the DVA requested the NRC review and approve the facility for unrestricted release because radioactive byproduct material was identified at the facility. The approval is consistent with a March 17, 2003, Letter of Understanding (LOU) between the NRC and DVA for DVA permittees. The LOU requires the DVA to submit for NRC review, permittee requests for the release of buildings for unrestricted use where radioactive materials with a half-life greater than 120 days were used. During a special inspection at the Medical Center in Bath, the DVA discovered radioactive materials in the form of five old stock vials of carbon-14, four carbon-14 standards, and four hydrogen-3 standards, which have half-lives greater than 120 days. On November 20, 2003, the DVA submitted a request to the NRC, consistent with the LOU, to release the Medical Center in Bath, New York, for unrestricted use. The DVA Medical Center provided survey results which demonstrated that the facilities were in compliance with Title 10, Code of Federal Regulations (CFR) 20.1402, "Radiological Criteria for Unrestricted Use." No radiological remediation activities are required to complete the proposed action. The NRC staff has reviewed the information provided and surveys performed by the DVA to demonstrate compliance with the license termination criteria in Subpart E of 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use," to ensure the NRC's decision is protective of public health and safety and the environment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the DVA's request to release the DVA Medical Center in Bath, New York, for unrestricted use. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the decommissioning of the DVA's facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). Additionally, no non-radiological impacts were identified. The staff also finds that the proposed release for unrestricted use of the DVA's facilities is in compliance with 10 CFR 20.1402, and finds no other activities in the area that could result in cumulative impacts. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," the DVA's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents include DVA's letter dated November 20, 2003, with enclosures (Accession No. ML033280739); and the EA summarized above (Accession No. ML041210173). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Lisle, Illinois, this 30th day of April 2004.

George M. McCann,

Acting Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–10517 Filed 5–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of May 10, 17, 24, 31, June 7, 14, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 10, 2004

Monday, May 10, 2004

1 p.m.—Briefing on Grid Stability and Offsite Power Issues (Public Meeting) (Contact: Cornelius Holden, 301–415–3036).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Tuesday, May 11, 2004

9:30 a.m.—Briefing on Status of Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Ed Baker, 301–415–2344).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.1:30 p.m.—Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of May 17, 2004—Tentative

There are no meetings scheduled for the Week of May 17, 2004.

Week of May 24, 2004—Tentative

Tuesday, May 25, 2004

1:30 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Wednesday, May 26, 2004

10:30 a.m.—All Employees Meeting (Public Meeting).

1:30 p.m.—All Employees Meeting (Public Meeting).

Week of May 31, 2004—Tentative

Wednesday, June 2, 2004

9:30 a.m.—Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 7, 2004—Tentative

There are no meetings scheduled for the Week of June 7, 2004.

Week of June 14, 2004—Tentative

There are no meetings scheduled for the Week of June 14, 2004.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

SUPPLEMENTARY INFORMATION: By a vote of 3–0 on May 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Dominion Nuclear Connecticut (Millstone Nuclear Power Station, Units 2 and 3) (Rejection by the Secretary of Petition to Intervene in License Renewal Proceeding as Premature)" be held on May 4, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 5, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–10613 Filed 5–6–04; 10:03 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form S–3, OMB Control No. 3235–0073, SEC File No. 270–61; Form S–8, OMB Control No. 3235–0066, SEC File No. 270–66.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form S–3 (OMB Control No. 3235–0073; File No. SEC 270–61) is used by issuers to register securities pursuant to the Securities Act of 1933. Form S–3 gives investors the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be companies that file Form S–3 with the Commission on occasion. Form S–3 is a public document and all information provided is mandatory. Approximately 2,010 issuers file Form S–3 at an estimated 398 hours per response for a total annual burden of 799,980 hours. It is estimated that 50% of the total burden hours (399,990 reporting burden hours) is prepared by the issuer.

Form S–8 (OMB Control No. 3235–0066; SEC File No. 270–66) is the primary registration statement used by qualified registrants to register securities issuers in connection with employee benefit plans. Form S–8 provides verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The likely respondents will be companies. The information must be filed with the Commission on occasion. Form S–8 is a public document. All information provided is mandatory. Approximately 4,050 issuers file Form S–8 at an estimated 24 hours per response for a total annual burden of 97,200 hours. It is estimated that 50% of the total burden hours (48,600 reporting burden hours) is prepared by the issuer.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov.*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 3, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10508 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26444; 812–13034]

Boston Capital Tax Credit Fund V L.P. and Boston Capital Associates V L.L.C.; Notice of Application

May 4, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections other than rule 38a–1.

APPLICANTS: Boston Capital Tax Credit Fund V L.P. (the "Partnership") and Boston Capital Associates V L.L.C. (the "General Partner").

SUMMARY OF THE APPLICATION: Applicants request an order to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATES: The application was filed on October 30, 2003, and amended on April 20, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 27, 2004, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street NW., Washington, DC 20549–0609. Applicants, One Boston Place, Suite 2100, Boston, MA 02108–4406.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, (202) 942–0634, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Partnership was organized on October 15, 2003, under the Delaware Revised Uniform Limited Partnership Act. The Partnership is intended to serve as a vehicle for equity investment in apartment complexes expected to be qualified for the low-income housing tax credit under the Internal Revenue Code of 1986, as amended.

2. The Partnership will operate as a "two-tier" partnership, *i.e.*, the Partnership will invest as a limited partner in operating partnerships (the "Operating Partnerships"), which will acquire, operate and maintain the apartment complexes in accordance with the purposes and criteria set forth in the Commission's release concerning two-tier real estate partnerships (the "Release").[1]

3. The Partnership's investment objectives are to realize (a) Certain tax benefits including low-income housing tax credits, (b) potential capital appreciation through increases in value and, to the extent applicable, amortization of the mortgage indebtedness of the apartment complexes, (c) cash distributions from liquidation, sale or refinancing of the apartment complexes (except with respect to certain non-profit Operating Partnerships), and (d) to the extent available, limited cash flow from operations.

4. On October 22, 2003, the Partnership filed a registration statement under the Securities Act of 1933 for the sale of approximately 7,000,000 units of beneficial interest ("Units") at $10.00 per Unit. The Partnership plans to offer a total of 15,000,000 Units for a period of approximately twenty-four months from the effective date of the Partnership's registration statement. The minimum investment will be of $5,000.

5. When placing an order for Units, an investor must represent in writing that he meets applicable suitability standards. The Partnership's prospectus ("Prospectus") provides that each investor will meet the following suitability standards: (a) Net worth (exclusive of home, home furnishings and automobiles) in excess of $150,000; or (b) annual gross income of $45,000 and a net worth (exclusive of home, home furnishings and automobiles) of $45,000. In no event will the Partnership employ suitability standards which are less restrictive than these standards. The Partnership also will impose certain restrictions on the transfer and assignment of the Units, including that each proposed assignee must produce evidence of his suitability.

6. The Partnership will be controlled by the General Partner pursuant to a partnership agreement ("Partnership Agreement"). The limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. However, the majority in interest of the limited partners will have the right (subject to certain limitations) to amend the Partnership Agreement, dissolve the Partnership, and remove the General Partner and elect a replacement. In addition, under the Partnership Agreement, each limited partner is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the General Partner without the express consent of a majority in interest of the limited partners. Such actions include: (a) Sale at any one time of all or substantially all of the assets of the Partnership; (b) dissolution of the Partnership; (c) sale of a substantial portion of the apartment complexes by the Operating Partnerships; and (d) the admission of a successor or additional general partner.

8. The Partnership will normally attempt to acquire between 90% and 99% interest in the operating profits, losses and tax credits of each Operating Partnership, with the balance remaining with the general partner of the Operating Partnership ("Operating General Partner"). The Partnership will normally attempt to acquire a substantial (50% to 99%) interest in the cash distributions of each Operating Partnership, with the balance remaining with the Operating General Partner. Regardless of the percentage interest the Partnership has in an Operating Partnership, the Operating Partnership's partnership agreement will include the right to: (a) Approve or disapprove the sale or refinancing of the applicable apartment complex; (b) replace the Operating General Partner; (c) approve or disapprove the dissolution of the Operating Partnership; (d) approve or disapprove amendments to the Operating Partnership's partnership agreement; and (e) direct the Operating General Partner to convene meetings and submit matters to a vote. The Partnership is expected to have access to the books and records of the Operating Partnership and to receive annual and quarterly reports. In addition, the Partnership will require that all Operating Partnerships provide to the limited partners substantially all of the rights required by section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

9. Applicants state that the Partnership Agreement and Prospectus will contain provisions designed to ensure fair dealing by the General Partner with the investors. All compensation to be paid to the General Partner and its affiliated persons ("affiliates") is specified in the Partnership Agreement and the Prospectus. The fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated through arms-length negotiations. Terms of all such compensation, however, are believed to be fair and not less favorable to the Partnership than would be the case if such terms had not been negotiated with independent third parties. Applicants state that the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines. These guidelines include, without limitation, the statements of policy adopted by NASAA applicable to real estate programs in the form of limited partnerships.

10. During the acquisition phase, Boston Capital Services, Inc. ("BCS") will receive commissions up to 7% of the aggregate gross proceeds on the sale of Units. BCS also will receive an expense allowance of up to 0.5% of the gross proceeds to defray accountable due diligence activities, up to a 2% dealer-manager fee and up to 1% for sales expenses. Boston Capital Holdings, LP will receive an asset acquisition fee of up to 8.5%.

[1] Investment Company Act Release No. 8456 (Aug. 9, 1974).

11. During the operating phase, the General Partner will receive 1% of profits, credits, losses and net cash flow based on the Partnership's share of these items from the Operating Partnerships. The General Partner (or its affiliates) will also receive an annual Partnership management fee of 0.5%. Affiliates of the General Partner will receive a property management fee for the apartment complexes of up to 5% of the gross receipts from the complexes. In addition, the General Partner and its affiliates may be reimbursed for the actual costs of goods and materials used for or by the Partnership during the operational phase. During the liquidation phase, the General Partner will receive 5% of any liquidation, sale or refinancing proceeds after certain priority allocations and distributions.

12. All proceeds of the public offering of Units will initially be placed in an escrow account with the Wainwright Bank & Trust Company. The Partnership intends to apply such proceeds to the acquisition of Operating Partnership interests as soon as possible. Such proceeds may be temporarily invested in bank time deposits, certificates of deposit, bank money market accounts, and government securities. The Partnership will not trade or speculate in temporary investments. If subscriptions for at least 250,000 Units have not been received by one year from the date upon which the Partnership's registration statement is declared effective, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant an exemption from the Act to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company. Applicants seek an order under sections 6(c) and 6(e) exempting the Partnership from all provisions of the Act, except sections 37 through 53 and the rules and regulations under those sections, other than rule 38a–1.

2. Applicants assert that the requested relief is consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert, among other things, that investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

3. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the Release. The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c).

4. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

5. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Operating Partnership by various Federal, state, and local agencies provide protection to investors in Units.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10559 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26442; 812–13033]

RSI Retirement Trust and Retirement System Investors Inc.; Notice of Application

May 4, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

APPLICANTS: RSI Retirement Trust (the "Trust") and Retirement System Investors Inc. (the "Adviser").

FILING DATES: The application was filed on October 28, 2003 and amended on April 20, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Ryan M. Louvar, Esq., BISYS, 100 Summer Street, Suite 1500, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Attorney-Adviser, at (202) 942–0527, or Annette M. Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a New York common law trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has seven series (each series, a "Fund" and collectively, the "Funds"), each with its own investment objectives, policies and restrictions. The Adviser, a Delaware corporation and wholly-owned subsidiary of Retirement System Group

Inc., a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").[1]

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Fund, and the Adviser ("Management Agreement") that was approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholder(s). The Management Agreement permits the Adviser to enter into separate investment advisory agreements ("Sub-Advisory Agreements") with one or more sub-advisers ("Sub-Advisers"). Each Sub-Adviser has discretionary authority to invest that portion of the Fund's assets assigned to it by the Adviser. Each Sub-Adviser is or will be registered or exempt from registration under the Advisers Act. The Adviser monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Sub-Advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Sub-Advisers out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Funds (an "Affiliated Sub-Adviser"). None of the current Sub-Advisers is an Affiliated Sub-Adviser.

[1] Applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) use the manager of managers structure described in the application; and (c) comply with the terms and conditions in the application ("Future Funds," and together with the Funds, the "Funds"). The Trust is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Management Agreements will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before shares of such Fund are offered to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the "manager of managers" structure described in this application. Such Fund's prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management and administrative services to each of the Funds, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant Fund's investment objectives, policies and restrictions.

4. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

5. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. No trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-

traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Adviser will furnish the shareholders of the applicable Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this obligation, the Adviser will provide the shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10562 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49648; File No. SR–NASD–2004–067]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend NASD Rule 7010 to Modify the Charges Paid by Members Receiving Nasdaq's Service for Trading Exchange-Listed Securities

May 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Nasdaq under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes certain changes to Rule 7010 to modify the service charges paid by members for the Nasdaq service for trading exchange-listed securities. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].[5]

* * * * *

7010. System Services

(a) through (c) No change.

(d) Computer Assisted Execution Service

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charge[s]

[$100 per month for each market maker terminal receiving CAES.] *$200 per month per member receiving the service.*

(2) No change

(e) through (u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to modify the monthly service charge paid by members receiving Nasdaq's Computer Assisted Execution System ("CAES") service[6] for trading exchange-listed securities by replacing the monthly $100 per terminal charge with a flat monthly fee of $200 per member firm, regardless of the number of terminals used by such firm. Nasdaq believes that the proposed rule change will result in a more equitable allocation among members of the charges associated with this service. Nasdaq also believes that the overall decrease in fees for using this service should encourage greater use of Nasdaq in trading exchange-listed securities, and contribute to greater competition for executions of orders in New York Stock Exchange, Inc. and American Stock Exchange LLC-listed securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and Section 15A(b)(5) of the Act,[8] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to market demands, Nasdaq believes that the proposed amendment supports the efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10]

[5] The proposed rule change is marked to show changes from the rule text in the NASD Manual available at *http://www.nasd.com.*

[6] CAES is the computer order routing and execution facility for ITS securities. The CAES functionality is offered through the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). Telephone conversation between Alex Kogan, Office of General Counsel, Nasdaq, and Lisa N. Jones, Special Counsel, Division of Market Regulation ("Division"), Commission, on April 28, 2004.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*-3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii)

[10] 17 CFR 240.19b–4(f)(2).

thereunder, because it establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–067 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–067 and should be submitted on or before June 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10560 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49650; File No. SR–NASD–2004–064]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Technical Corrections to SuperMontage Rules

May 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Nasdaq has prepared. Pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(3) thereunder,[3] Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make technical corrections to the rules governing the operation of the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4700. Nasdaq National Market Execution System (NNMS)

* * * * *

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (ll) No Change.

(mm) The term "Pegged" shall mean, for *priced limit* orders so designated, that after entry into the NNMS, the price of the order is automatically adjusted by NNMS in response to changes in the Nasdaq inside bid or offer, as appropriate. [The price of a Pegged Order may be equal to the inside quote on the same side of the market (a Regular Pegged Order) or may be equal to a specified amount better than the inside quote on the contra side of the market (a Reverse Pegged Order).] *The NNMS Participant entering a Pegged Order may specify that the price of the order will either equal the inside quote on the same side of the market (a "Regular Pegged Order") or equal a price that deviates from the inside quote on the contra side of the market by $0.01 (i.e., $0.01 less than the inside offer or $0.01 more than the inside bid) (a "Reverse Pegged Order").* The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be *permanently* converted into an un-pegged limit order. Pegged Orders shall not be available for ITS Securities.

(nn) through (uu) No Change.

* * * * *

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) No Change.

(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) No Change.

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker [or] to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) No Change.

(b) through (c) No Change.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(3).

(1) through (2) No Change.

(3) membership in, or access arrangement with *a participant of*, a clearing agency registered with the Commission [which] *that* maintains facilities through which NNMS-compared trades may be settled;

(4) through (5) No Change.

(e) through (h) No Change.

* * * * *

4706. Order Entry Parameters

(a) No Change.

(b) Directed Orders in Nasdaq-listed Securities. A participant may enter a Directed Order in a Nasdaq-listed security into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) through (B) No Change.

(C) a Directed Order that is entered at a price that is inferior to the Attributable Quote/Order of the Quoting Market Participant to which the order is directed. [Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.]

(2) through (5) No Change.

(c) through (e) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, ITS/CAES Market Maker or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations—[f]*F*or each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) through (iv) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order *is* and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm described below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) No Change.

(ii) Exceptions—The following exceptions shall apply to the above execution parameters:

a. through e. No Change.

[(f)] *f.* A Fill or Return order in an ITS Security will be executed solely by the NNMS at the best bid/best offer, without delivering the order to an ITS Exchange. The NNMS will, if necessary, execute against interest at successive price levels.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) No Change.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next [Quoting Market Participant] eligible Quote/Order in queue. The system then will zero out [the] *those* ECN['s] Quote/Orders *to which the Non-Directed Order was delivered.* [at that price level on that side of the market,] *If there are no other Quote/Orders at the declined price level,* [and] the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) through (v) No Change.

(D) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing, Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant or NNMS Order Entry Firm, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and

any odd-lot remainders, will be refreshed, updated, or retained, in conformity with NNMS Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) No Change.

(3) through (8) No Change.

(c) through (e) No Change.

* * * * *

4715. Adjustment of Open Quotes and/or Orders

NNMS will automatically adjust the price and/or size of open quotes and/or orders in all NNMS securities (unless otherwise noted) resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent ($0.01), as follows:

(a) through (b) No Change.

(c) Buy Orders—Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (*i.e.* cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) through (3) No Change.

(4) Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph ([1]*2*) above, while the dollar value of the securities shall be determined using the formula in paragraph ([2]*3*) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph ([2]*3*) above.

(5) Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section ([1]*2*) above, and stock portion thereafter pursuant to sections ([2]*3*) and/or ([3]*4*) above.

(6) No Change.

(d) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2004, the Commission approved Nasdaq's proposal to transition the trading of exchange-listed securities onto the SuperMontage trading platform from the Computer Assisted Execution System. The text of the SuperMontage rules approved as part of that proposal, filed as Exhibit A to that proposal ("Exhibit A"), contained minor technical errors as published.[4] Exhibit A did not accurately reflect some of the text of several NASD rule proposals that had previously been approved by the Commission and were in effect.[5]

Specifically, Exhibit A did not accurately reflect some of the text of SR–NASD–2003–81 and Amendment No. 1 thereto, as approved by the Commission.[6] That proposal modified NASD Rule 4710(b)(1)(C)(ii) to change how the quotes of order-delivery Electronic Communication Networks in SuperMontage are decremented after they decline an order shipped to them. Some of those approved changes were inadvertently omitted from Exhibit A and are being restored by this proposed rule change.

Exhibit A also did not accurately reflect the text of Amendment No. 3 to SR–NASD–2003–85, as approved by the Commission.[7] Amendment No. 3, among other things, made non-substantive changes to NASD Rule 4705 to reflect that indirect participation in a clearing agency occurs through a 'participant,' as such term is defined in Section 3(a)(24) of the Act. That approved change was inadvertently omitted from Exhibit A and is being restored by this proposed rule change. Exhibit A also did not accurately reflect the text of SR–NASD–2003–150, as approved by the Commission.[8] Specifically, SR–NASD–2003–150 modified NASD Rule 4701(mm) to create a new order type called a Pegged Order. Several of those approved changes are being restored through this proposed rule change.

Lastly, the proposed rule change also makes numbering and other non-substantive rule modifications.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general and with Section 15A(b)(6) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Nasdaq believes the proposed rule change is consistent with the Act, for the same reasons that the proposed rule changes were consistent with the Act when originally filed. According to Nasdaq, in approving SR–NASD–2003–81, the Commission found that the proposed quote decrementation procedure was consistent with the Act in that it is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for

[4] *See* Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004) ("Exhibit A").

[5] One of these omissions, the omission of text from Amendments Nos. 2 and 3 to SR–NASD–2003–143, as approved by the Commission in Securities Exchange Act Release No. 49020 (January 5, 2004), 69 FR 1769 (January 12, 2004) (SR–NASD–2003–143) was corrected in Securities Exchange Act Release No. 49547 (April 9, 2004), 69 FR 20091 (SR–NASD–2004–46).

[6] *See* Securities Exchange Act Release No. 48434 (September 3, 2003), 68 FR 53409 (September 10, 2003).

[7] *See* Securities Exchange Act Release No. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003).

[8] *See* Securities Exchange Act Release No. 48798 (November 17, 2003), 68 FR 66147 (November 25, 2003).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6). Nasdaq originally stated that the filing was consistent with Section 15A(b)(3), but corrected the statutory reference. Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Elizabeth MacDonald, Attorney, Division of Market Regulation ("Division"), Commission, April 21, 2004.

collecting, distributing, and publishing quotations. In approving SR–NASD–2003–85, according to Nasdaq, the Commission found that post-trade [11] anonymity is consistent with the Act and has been available in different forms for many years. As Nasdaq noted in SR–NASD–2003–150, the Pegged Order is consistent with the Act in that it provides market participants with a voluntary tool to use to offer liquidity at the inside market in Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD neither solicited nor received written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act,[12] in that it is concerned solely with the administration of the self-regulatory organization.

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–064 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–064 and should be submitted on or before June 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10561 Filed 5–7–04; 8:45 am]

BILLING CODE 8010–01–P

[11] Nasdaq corrected an error to the text, which formerly read "pre-trade." Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Elizabeth MacDonald, Attorney, Division, Commission, May 3, 2004.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before July 9, 2004.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Applications for Business Loans".

Description of Respondents: Applicants for an SBA Loan.

Form Nos: 4, 4SCH–A, 4–1, 4–L, 4–SHORT.

Annual Responses: 60,000.

Annual Burden: 1,200,000.

Title: "Personal Financial Statement".

Description of Respondents: Small Business Loan Application.

Form No: 413.

Annual Responses: 187,027.

Annual Burden: 280,608.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 04–10520 Filed 5–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P031]

State of New Mexico

As a result of the President's major disaster declaration for Public Assistance on April 29, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Bernalillo, Eddy, Mora and San Miguel Counties in the State of New Mexico constitute a disaster area due to damages caused by severe storms and flooding occurring on April 2 through April 11, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 28, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	2.900
Non-Profit Organizations With Credit Available Elsewhere	4.875

The number assigned to this disaster for physical damage is P03111.

(Catalog of Federal Domestic Assistance Program No. 59008)

Dated: May 3, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–10519 Filed 5–7–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34498]

Ameren Corporation—Control Exemption—Coffeen and Western Railroad Company

Ameren Corporation (Ameren), a noncarrier holding company, has filed a verified notice of exemption to acquire control of Coffeen and Western Railroad Company (CWRC) upon CWRC's becoming a Class III rail carrier.[1] Ameren currently controls Class III rail carriers Joppa & Eastern Railroad (JERR) and Missouri Central Railroad Company (MCRR).[2]

The transaction was expected to be consummated on or shortly after April 22, 2004, the effective date of the exemption.

Ameren states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34498 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sandra L. Brown, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–10541 Filed 5–7–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34497]

Coffeen and Western Railroad Company—Lease and Operation Exemption—Near Coffeen, IL

Coffeen and Western Railroad Company (CWRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Ameren Energy Generating Company (AEGC) and operate approximately 0.2 miles of rail line.[1] The line is located near Coffeen, IL, originating off of the Coffeen Power Plant's main lead track near Station 10+00 and continuing in a northerly direction to Station 0+00, a point near a line owned by Norfolk Southern Railway Company.

This transaction is related to STB Finance Docket No. 34498, *Ameren Corporation—Control Exemption—Coffeen and Western Railroad Company*, wherein Ameren Corporation seeks to acquire control of CWRC upon CWRC's becoming a Class III carrier.

CWRC certifies that its projected revenues do not exceed those that would qualify it as a Class III carrier and do not exceed $5 million. The transaction was scheduled to be consummated on or shortly after April 22, 2004, the effective date of the exemption.[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34497, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sandra L. Brown, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on its website at "*http://www.stb.dot.gov.*"

Decided: May 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–10540 Filed 5–7–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 205X)]

Union Pacific Railroad Company—Abandonment Exemption—in Sutter County, CA

On April 20, 2004, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon and discontinue service over a line of railroad known as the Yuba City Industrial Lead, extending from milepost 136.38 near Marysville, CA, to milepost 139.77 near Colusa Junction,

[1] On April 15, 2004, CWRC filed a verified notice of exemption under 49 CFR 1150.31 in STB Finance Docket No. 34497, *Coffeen and Western Railroad Company—Lease and Operation Exemption—near Coffeen, IL*, to lease from Ameren Energy Generating Company and operate approximately 0.2 miles of rail line near Coffeen, IL. Upon consummation of the transaction covered by that exemption, CWRC would become a carrier.

[2] JERR, is controlled through Ameren's controlling interest in Electric Energy, Inc. Its track is entirely within Illinois, located approximately 155 miles from CWRC's track. MCRR's track and trackage rights are located entirely within Missouri, and its lines are leased and operated by Central Midland Railway Company.

[1] CWRC indicates that by this transaction, common carrier operations will be established on this formerly private track and any existing or new shipper may request service on the line.

[2] CWRC states that the parties are in the process of entering into a lease agreement and that it anticipates execution of that agreement by the end of April 2004.

CA, a distance of 3.39 miles, in Sutter County, CA. The line traverses United States Postal Service Zip Codes 95932, 95592, and 95593.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 6, 2004.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 1, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub–No. 205X) and must be sent to: (1) Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before June 1, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our web site at *http://www.stb.dot.gov.*

Decided: April 29, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–10318 Filed 5–7–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8812

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8812, Additional Child Tax Credit.

DATES: Written comments should be received on or before July 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Additional Child Tax Credit.

OMB Number: 1545–1620.

Form Number: 8812.

Abstract: Section 24 of the Internal Revenue Code allows taxpayers a credit for each of their dependent children who is under age 17 at the close of the taxpayer's tax year. The credit is advantageous to taxpayers as it directly reduces the tax liability for the year and, if the taxpayer has three or more children, may result in a refundable amount of the credit. Form 8812 helps respondents correctly figure their refundable credit.

Current Actions: There are no changes being made to Form 8812 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 9,000,000.

Estimated Time Per Respondent: 1 hour 4 minutes.

Estimated Total Annual Burden Hours: 9,630,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–10568 Filed 5–7–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–37, Extraterritorial Income Exclusion Elections.

DATES: Written comments should be received on or before July 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Extraterritorial Income Exclusion Elections.

OMB Number: 1545–1731.

Revenue Procedure Number: Revenue Procedure 2001–37.

Abstract: Revenue Procedure 2001–37 provides guidance for implementing the elections (and revocation of such elections) established under the "FSC Repeal and Extraterritorial Income Exclusion Act of 2000".

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 56.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 19.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–10570 Filed 5–7–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, May 21, 2004 from 11 a.m. EDT to 12:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, May 21, 2004, from 11 a.m. EDT to 12:30 p.m. EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: May 5, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–10569 Filed 5–7–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 90
Monday, May 10, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–17]

Federal Property Suitable as Facilities to Assist the Homeless

Correction

In notice document 04–8979 beginning on page 22086 in the issue of Friday, April 23, 2004 make the following corrections:

1. On page 22087, in the third column, preceding the eleventh line from the bottom, insert this heading:
Suitable/Unavailable Properties
Land (by State)

2. On page 22088, in the first column, after the fourth full entry, preceding the entry "California", insert this heading:
Unsuitable Properties
Buildings (by State)

[FR Doc. C4–8979 Filed 5–7–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
May 10, 2004

Part II

Social Security Administration

20 CFR Parts 404 and 408
Special Benefits for Certain World War II Veterans; Reporting Requirements, Suspension and Termination Events, Overpayments and Underpayments, Administrative Review Process, Claimant Representation, and Federal Administration of State Recognition Payments; Final Rules

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 408

RIN 0960–AF72

Special Benefits for Certain World War II Veterans; Reporting Requirements, Suspension and Termination Events, Overpayments and Underpayments, Administrative Review Process, Claimant Representation, and Federal Administration of State Recognition Payments

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are adding six new subparts to part 408 of our regulations and reserve an additional subpart for future use. Part 408 sets forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act (the Act). The title VIII program was effective in May 2000 and provides monthly benefits to certain World War II (WWII) veterans who previously were eligible for supplemental security income (SSI) payments under title XVI of the Act and reside outside the United States. In these final rules, we are setting forth six new subparts that deal with the following topics: the events you must report to us after you apply for SVB, the circumstances that will affect your SVB entitlement, how we handle overpayments and underpayments under the SVB program, how the administrative review process works, your right to appoint someone to represent you in your dealings with us, and administration agreements we may enter into with a State under which we will pay supplemental recognition payments to you on the State's behalf.

In addition, we are reserving for future use a subpart in part 408 that would explain when we will pay your SVB to someone else on your behalf. An NPRM that included that subpart was published in the **Federal Register** on September 25, 2003 (68 FR 55323). We plan to issue those final rules at a later date.

EFFECTIVE DATE: These final rules are effective on June 9, 2004.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet Web site for SSA (*i.e.*, Social Security Online): *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, Room 100, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 251 of the Foster Care Independence Act of 1999 (Public Law No. 106–169), enacted on December 14, 1999, added a new title VIII to the Act (Special Benefits for Certain World War II Veterans). Title VIII requires SSA to pay special veteran's benefits (SVB) to certain WWII veterans who reside outside the United States. Establishing SVB entitlement is a two-step process: first, you need to show that you meet certain qualifying requirements; second, once we determine that you qualify for SVB, you will be entitled to SVB payments after you begin residing outside the U.S.

On April 4, 2003, we published final rules that set forth the rules we follow in determining whether you qualify for SVB, how you file for benefits, what evidence you must give us in connection with your claim and how we evaluate that evidence, and how we compute and pay SVB (67 FR 55774). We are now adding six subparts in part 408 that provide additional guidelines for the title VIII program with respect to the topics discussed below, and reserve for future use a subpart on representative payment in the title VIII program.

Reporting Responsibilities Under the SVB Program

Section 806 of the Act directs SSA to prescribe requirements related to the reporting of any events and changes in circumstances that may affect the amount of, your qualification for, or your continuing entitlement to receive SVB. Among the events and changes in circumstances that could affect the amount of, your qualification for, or your continuing entitlement to receive SVB and which therefore need to be reported to us are:

- You change your mailing address or the address where you live.
- You plan to return to the United States to live on a permanent basis or you plan to visit the United States for more than one full calendar month. To receive SVB, you must be residing outside the United States. If you return to the U.S. on a permanent basis, we need to stop your SVB payments effective with the first full calendar month you begin residing in the United States. Although SVB is payable if you return to the United States for a temporary visit of less than one calendar month, your benefits may be suspended if you remain in the United States for more than one full calendar month. There are exceptions if you are unable to return to your foreign residence because of circumstances beyond your control or you are in the United States to present evidence or testimony in the appeal of a claim under any of the programs we administer.
- The amount of your other benefit income changes. Since the full SVB is reduced by the amount of any other benefit income you receive, a change in the amount of other benefit income you receive could result in an increase or decrease in the amount of the SVB we pay you.
- You die or your representative payee dies. If you die, your SVB entitlement ends. If your representative payee dies, we need to locate a new payee to receive your SVB payments on your behalf.
- Any of the SVB disqualifying events listed in section 804 of the Act occurs. This includes removal or deportation from the United States; fleeing from the United States to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you flee, for a crime or an attempt to commit a crime that is a felony or, in the State of New Jersey, is a high misdemeanor; violating a condition of probation or parole imposed under Federal or State law; or, in the case of an individual who is not a citizen or national of the United States, taking up residence in a country to which payments are withheld by the Treasury Department (Treasury) under 31 U.S.C. 3329. If a disqualifying event occurs and we have not yet found you qualified for SVB, we will deny your SVB claim. If we found you met all the requirements for SVB when the disqualifying event occurs, we will suspend your SVB payments.

Suspension and Termination of SVB

Section 810(d) of the Act authorizes the Commissioner of SSA to prescribe appropriate regulations for suspending SVB payments and terminating SVB entitlement. Once you are qualified for SVB, we will suspend your SVB payments if:

- You are no longer residing outside the United States;
- You fail to give us information we need in connection with your claim;

- We are unable to locate you;
- The amount of your other benefit income increases so that it exceeds the maximum SVB payable (75 percent of the SSI Federal Benefit Rate (FBR) payable to an individual);
- You are removed (including deported) from the United States pursuant to section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act;
- You are fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you fled, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which you fled, or in the case of the State of New Jersey, is a high misdemeanor;
- You violate a condition of probation or parole imposed under Federal or State law; or
- You are not a citizen or national of the United States and begin residing in a country to which payments to residents of that country are withheld by the Treasury Department under 31 U.S.C. 3329.

We will terminate your SVB entitlement for any one of the following reasons:

- Your benefit payments are suspended for 12 consecutive calendar months;
- You file a written request that we terminate your entitlement; or
- You die.

Overpayments and Underpayments

Section 808 of the Act deals with overpayments and underpayments under the SVB program. With respect to overpayments, section 808 authorizes the Commissioner to recover an SVB overpayment by reducing the amount of any future SVB payments you are due unless you refund the full amount of the overpayment to us. If we are unable to recover the overpayment by direct refund or benefit withholding (for example, because your SVB payments are in suspense), section 808 authorizes us to adjust the amount of any social security benefits you receive under title II of the Act. We will also notify the Secretary of the Treasury to withhold the overpayment from any Federal income tax refund you may be due in the future, as authorized under 31 U.S.C. 3720A. Section 808(c) of the Act further stipulates that there will be no adjustment of benefits or other overpayment recovery if you were without fault in creating the overpayment and adjustment or recovery would defeat the purpose of title VIII or be against equity and good conscience. If you die and have an outstanding SVB overpayment, we will seek refund of the overpayment from your estate.

With respect to underpayments, section 808 specifies that, if you are living at the time we take action on the underpayment, we will pay the amount due directly to you or to your representative payee, if one has been appointed. If you die before we make the payment to you, the amount due reverts to the general fund of the United States Treasury.

Determinations and the Administrative Review Process

Section 809 of the Act gives you the right to request that we review our determinations about your qualification for or entitlement to or the amount of your SVB payments. We also give you the right to request review of certain other determinations we make that you disagree with. We refer to determinations on which you may request administrative review as "initial determinations." Our administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

- Reconsideration;
- Hearing before an administrative law judge (ALJ); and
- Appeals Council (AC) review.

These are the same steps we provide for review of initial determinations under the titles II and XVI programs.

Claimant Representation

Titles II and XVI of the Act contain detailed provisions on claimant representation that give individuals the right to select another person (including an attorney) to represent them in their dealings with us and that regulate many aspects of that relationship. Though title VIII contains no specific provisions on claimant representation, we propose to extend to the SVB program by regulation many of the rules we follow on claimant representation in the SSI program. Specifically, we believe the SSI rules on the appointment, authority, conduct, and standards of responsibility of a representative should also apply to the SVB program. We also believe that the SSI rules we follow when a representative violates any of these requirements, rules, or standards should apply to a representative under the SVB program. However, we do not plan to extend to the title VIII program the SSI rules that apply to fees a representative may charge.

Federal Administration of State Recognition Payments

Section 810A of the Act authorizes SSA to enter an agreement with any State (or one of its political subdivisions) that provides cash payments (referred to as State recognition payments) on a regular basis to individuals who are entitled to SVB under which SSA will make the payments on behalf of the State. Under section 810A, any State that enters into an agreement must pay to SSA an amount equal to the recognition payments made on its behalf as well as a separate fee to cover SSA's costs of administering the State program.

Explanation of New Subparts

We are adding six new subparts to part 408 of our regulations and reserving an additional subpart for future use. Following is a list of the new subparts that includes a brief description of each section in the subpart. We are also revising § 408.101 to add these new subparts to the overview of part 408.

Subpart F (Reserved for Future Use)

We reserve for future use subpart F in part 408 for our rules on representative payment of SVB. An NPRM that included that proposed subpart F was published in the **Federal Register** on September 25, 2003 (68 FR 55323). We plan to issue those final rules at a later date.

Subpart G (Reports Required)

This subpart explains which events you must report to us after you file for SVB, what information your reports must include, and when your reports are due. Specifically:

- Section 408.701 provides an overview of what subpart G is about.
- Section 408.704 explains that you are responsible for making your own reports if you receive your own benefits. If you have a representative payee, you or your representative must make the required reports, unless you have been legally adjudged incompetent. In that case, your representative payee is responsible for making required reports to us.
- Section 408.708 describes the events you must report to us.
- Section 408.710 describes the information that you must include in your report. This includes the name and social security number of the person about whom you are making the report, the event you are reporting and the date the event occurred, and your name, if you are not the beneficiary.
- Section 408.712 explains that you can make your report in writing, orally,

or using other means of reporting (*e.g.*, fax).

• Section 408.714 explains that you should report an event as soon as a reportable event (described in § 408.708) occurs or, in cases where we request a report, within 30 days of our written request. If you fail to make a required report within the prescribed period, we may suspend your benefit payments.

Subpart H (Suspension and Termination of SVB)

This subpart explains the events that will cause us to suspend your SVB payments or terminate your SVB entitlement. Specifically:

• Section 408.801 provides an overview of what subpart H is about.

• Section 408.802 explains when suspension of your SVB payments is proper and when we will resume your payments.

• Section 408.803 explains the circumstances under which we will suspend your SVB payments for failing to comply with our request for necessary information.

• Section 408.806 explains the circumstances under which we will suspend your SVB payments because you are no longer residing outside the United States.

• Section 408.808 explains the circumstances under which we will suspend your SVB payments because your other benefit income exceeds the maximum SVB payable.

• Section 408.809 explains the circumstances under which we will suspend your SVB payments because you have been removed (including deported) from the United States under sections 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.

• Section 408.810 explains the circumstances under which we will suspend your SVB payments if you are fleeing the United States to avoid criminal prosecution or custody or confinement after a U.S. conviction for certain crimes or if you violate a condition of probation or parole under Federal or State law.

• Section 408.812 explains the circumstances under which we will suspend your SVB payments if you begin residing in a country to which payments are withheld by the Treasury Department under 31 U.S.C. 3329. This section only applies to you if you are not a citizen or national of the United States.

• Section 408.814 explains that you (or your representative payee) can request that your SVB entitlement be terminated. It also explains when your entitlement would end based on your request and the circumstances under which you would be required to repay benefits you have already received.

• Section 408.816 explains that SVB entitlement ends with the month of death.

• Section 408.818 explains that your SVB entitlement will terminate if your SVB payments have been in suspense for 12 consecutive months.

• Section 408.820 explains that, whenever we plan to suspend or reduce your SVB payments or terminate your SVB entitlement, we will send you a notice of our intended action. The notice would explain your right to appeal that action and the time frames within which your appeal must be filed. The notice will also explain if you have a right to continue receiving benefits while you appeal the suspension, reduction or termination action, and your right to waive continued payment during your appeal.

Subpart I (Overpayments and Underpayments)

This subpart sets forth the rules we will follow when you receive more or less than you should have in SVB payments. These final rules are similar in many respects to the rules we currently follow in dealing with overpayments and underpayments under the titles II and XVI programs. Specifically:

• Section 408.900 provides an overview of what is covered in subpart I.

• Section 408.901 defines "underpayment"—payment of less than the amount due for a given period.

• Section 408.902 defines "overpayment"—payment of more than the amount due for a given period.

• Section 408.903 explains how we determine the amount that you are underpaid or overpaid. It also explains that there cannot be an underpayment for a period in which we paid more than the correct amount, even though we waived recovery of any overpayment for that period.

• Section 408.904 explains that, if you are underpaid, the amount due will be paid to you in a separate payment or by increasing the amount of your monthly SVB payment. It also explains that, if you die before we pay you any part of an underpayment, the balance of the underpayment reverts to the U.S. Treasury.

• Section 408.905 explains that we will withhold or adjust an underpayment due you for a period to reduce any overpayment to you for a different period.

• Section 408.910 explains the circumstances under which we will waive adjustment or recovery of an overpayment. Specifically, we will waive adjustment or recovery if you were without fault in connection with the overpayment and recovery of the overpayment would defeat the purpose of the SVB program or be against equity and good conscience. These are the same criteria we use to determine whether we can waive recovery of an overpayment under the title II program.

• Section 408.911 explains that, when we waive recovery of an overpayment, this frees you from having to repay the overpaid amount.

• Section 408.912 explains how we determine whether you were without fault in creating an overpayment.

• Section 408.913 explains how we determine whether recovery of an overpayment would defeat the purpose of the SVB program.

• Section 408.914 explains the criteria we use to determine whether recovery of an overpayment would be against equity and good conscience.

• Section 408.918 explains that when you receive more or less than the correct amount of SVB, we will send you a notice about the incorrect payment. If you are overpaid, the notice will tell you about recovery of the overpayment and of your rights to appeal the overpayment determination and to request that we waive recovery of the overpayment.

• Section 408.920 explains that we will seek refund of the overpayment if we do not waive recovery. We will seek refund from your estate if you die before we recover the full amount of the overpayment.

• Section 408.922 explains that, if you are overpaid, have not refunded the overpayment to us, and are receiving SVB payments, we will adjust your future payments to recover the overpayment.

• Section 408.923 explains that, in adjusting your SVB payments to recover an overpayment, the amount that we will withhold is limited to 10 percent of the maximum SVB monthly payment amount. This section also explains that you have the right to request a higher or lower rate of withholding and explains how we determine an appropriate lower rate of withholding when you request a lower rate. If we find that you engaged in fraud, misrepresentation or concealment of material information in connection with the overpayment, we will not limit the amount we will withhold from SVB each month.

• Section 408.930 explains that, if you received an SVB overpayment that you have not refunded to us and you are not currently receiving SVB payments, but are receiving title II benefits, we will adjust your title II benefits to recover the

SVB overpayment. This section also explains the circumstances when we will not adjust your title II benefits.

• Section 408.931 explains that the rate of withholding we will use to recover an SVB overpayment from your title II benefits is limited to 10 percent of title II benefits payable to you in a month except that we will withhold 100 percent of your benefits if you willfully misrepresented or concealed material information in connection with the overpayment. This section also explains that you may request a higher or lower rate of withholding.

• Section 408.932 explains that we will send you a notice if we plan to adjust your title II benefits to recover an SVB overpayment. The notice will tell you (1) the amount of the overpayment that you owe, (2) the amount we plan to withhold from your title II benefits to recover the overpayment, (3) that you can ask us to review our determination that you still owe the amount stated in the notice, (4) that you may request a different rate of withholding, and (5) that you can request a waiver of recovery of the overpayment balance.

• Section 408.933 explains when we will begin adjusting your title II benefits to recover an SVB overpayment. We will not take any action for 30 days after the date of the notice. If you request review, waiver or a different rate of adjustment during that 30-day period, we will take no action before we send you written notice of our decision on the matter.

• Section 408.940 explains that, where an overpaid person does not refund an overpayment to us and is not currently receiving title II or SVB payments from which we can withhold the overpayment, we will refer the overpayment to the Department of the Treasury for withholding from any Federal income tax refund you may be due. We inadvertently omitted the reference to title II from the version of § 408.940 that was published in the Notice of Proposed Rulemaking (NPRM). We have inserted that reference into the final regulation.

• Section 408.941 explains that we will send you a notice before we refer an overpayment to Treasury for tax refund offset. The notice will (1) tell you the amount of the overpayment, (2) give you 60 days within which to either repay the amount or ask that we waive it, (3) explain the conditions under which we will waive the overpayment, (4) explain that we will review any evidence you wish to present that the overpayment is not past due or legally enforceable, and (5) explain your right to inspect or copy our records related to the overpayment.

• Section 408.942 explains that, before we refer an overpayment to Treasury for tax refund offset, you will have the chance to submit evidence that the debt is not past due or legally enforceable. After reviewing the evidence submitted, we will issue our written findings.

• Section 408.943 explains that we will issue written findings to you, your attorney or other representative concerning whether the overpayment is past due and legally enforceable. These written findings are the final agency action on these issues.

• Section 408.944 explains that, if you tell us you wish to inspect or copy our records related to the overpayment, we will either notify you of the time and place you may do so or mail copies of the records to you.

• Section 408.945 explains that if, within 60 days after the date of the notice, you present evidence that the overpayment is not past-due or legally enforceable or ask us to waive collection of the overpayment, we will not refer the overpayment to Treasury for offset until we issue written findings on the matter.

• Section 408.946 explains that if a tax refund is insufficient to recover an overpayment in a given year, the case will remain with Treasury for recovery from future income tax refunds you may be due.

• Section 408.950 explains that, when appropriate, we may accept a compromise settlement (payment of less than the full amount of the overpayment) to discharge the entire overpayment debt or we may suspend or terminate our efforts to collect the overpayment. We would consider taking one of these actions if we find that you or your estate do not have the ability to pay the full amount of the overpayment presently or in the future within a reasonable period of time or that the cost of collection is likely to exceed the amount of recovery. In deciding whether to take any of these actions, we would apply the rules that we apply concerning such actions for title II overpayments at § 404.515(b)–(f) and other applicable rules, including the Federal Claims Collection Standards (FCCS) at 31 CFR 900.3 and parts 902 and 903, established under the authority of 31 U.S.C. 3711(a)(d). We added a reference to 31 CFR 900.3 to the citation to the FCCS in the final regulations. This reference was inadvertently omitted from the NPRM. If we suspend or terminate collection, we may take collection action in the future in accordance with Federal law and the FCCS. Failure to make payment in the manner and within the time that we require in a compromise settlement will result in reinstatement of our claim for the full amount of the overpayment less any amounts paid.

Subpart J (Determinations and the Administrative Review Process)

This subpart sets forth our rules on administrative review of SVB initial determinations. Again, as with our rules in subpart I on overpayments, these rules follow closely our rules on administrative review of titles II and XVI initial determinations. Regarding the expedited appeals process, administrative law judge hearings, Appeals Council review of ALJ hearings or dismissals, Court remand cases, and time limits for reopening a final determination we previously made, these final rules provide cross-references to the appropriate SSI rules while noting any exceptions in those rules that are applicable to the title VIII program. Specifically:

• Section 408.1000 provides an overview of the administrative review process.

• Section 408.1001 defines certain terms used in subpart J.

• Section 408.1002 explains that initial determinations are the determinations we make that are subject to administrative and judicial review.

• Section 408.1003 lists administrative decisions we make that are initial determinations.

• Section 408.1004 lists administrative actions that are not initial determinations. Although we may review these actions, they are not subject to the administrative and judicial review process.

• Section 408.1005 explains that we will mail you a notice whenever we make an initial determination in your case. The notice will tell you what our determination is, our reasons for making the determination, and your right to request a reconsideration of the determination.

• Section 408.1006 explains that an initial determination is binding unless you request a reconsideration within the stated time period or we revise it.

• Section 408.1007 explains that reconsideration is the first step in the administrative review process if you are dissatisfied with the initial determination.

• Section 408.1009 explains that you must file a request for reconsideration within 60 days after you receive our notice of initial determination. This section also explains that you may ask for more time to request a reconsideration if you had good cause for missing the 60-day deadline.

- Section 408.1011 explains the standards we follow in determining whether you had good cause for missing the 60-day deadline to request a review.
- Section 408.1013 explains that, in requesting a review of our initial determination, you can ask for a case review or, in cases involving suspension, reduction, or termination of your SVB payments, an informal or formal conference. If you request a case review, you will be given the opportunity to review the evidence in our files and then present oral and written evidence to us. If you are permitted to request an informal conference, you will also have the opportunity to present witnesses. If you are permitted to request a formal conference, you will also be given the opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses.
- Section 408.1014 explains that, if you request a review of our initial determination on your application to receive SVB, you may elect only a case review.
- Section 408.1015 explains that, if we notify you that we plan to suspend, reduce or terminate your SVB payments, you have the choice of a case review, an informal conference, or a formal conference.
- Section 408.1016 explains the rules we follow if you request a formal or informal conference.
- Section 408.1020 explains how we make a reconsidered determination and that the person who makes it will have no prior involvement with the initial determination.
- Section 408.1021 explains that a reconsidered determination is binding unless you request the next stage of the administrative review process within the stated time.
- Section 408.1022 explains that we will send you a notice of our reconsidered determination that explains the reasons for our determination and your further appeal rights.
- Section 408.1030 provides a cross-reference to the SSI rules in §§ 416.1423–416.1428 that explain when you may use the expedited appeals process (EAP). Under the EAP, you may go directly to a Federal District Court without first completing the administrative review process if the only factor preventing a determination that is favorable to you is a provision of the law you believe is unconstitutional.
- Section 408.1040 provides a cross-reference to the SSI rules in §§ 416.1429–416.1440 that describe hearings before an ALJ and explain when you may request an ALJ hearing. As explained in § 416.1436, we hold ALJ hearings in the 50 States, the District of Columbia and the Northern Mariana Islands.
- Section 408.1045 provides a cross-reference to the SSI rules in §§ 416.1444–416.1461 that describe additional procedures that apply when you request a hearing before an ALJ.
- Section 408.1050 provides a cross-reference to the SSI rules in §§ 416.1467–416.1482 that describe procedures before the Appeals Council and explain when you may request Appeals Council review of an ALJ decision.
- Section 408.1060 provides a cross-reference to the SSI rules in §§ 416.1483–416.1485 that explain what happens if a Federal Court remands your case back to SSA for further review.
- Section 408.1070 provides a cross-reference to the SSI rules in §§ 416.1487–416.1494 that explain the circumstances under which we will reopen and revise a final determination we previously made on your request for review.

Subpart K (Representation of Parties)

As explained above, we believe that a number of the SSI provisions on representation of parties should also apply under the SVB program. Section 408.1101, therefore, explains that, for purposes of claimant representation under the SVB program, we will follow the rules in §§ 416.1500–416.1505, 416.1507–416.1515 and 416.1540–416.1599 of our SSI rules.

Subpart L (Federal Administration of State Recognition Payments)

This subpart sets forth our rules on Federal administration of a State's recognition payment program. Specifically:

- Section 408.1201 explains what State recognition payments are.
- Section 408.1205 explains that a State may enter into an agreement with SSA under which SSA will administer the State's recognition payment program by determining your eligibility for the payments and by making recognition payments on the State's behalf.
- Section 408.1210 explains that a Federal-State agreement must, at a minimum, specify who is eligible for recognition payments; what fees the State must pay to SSA to administer the program; how long the agreement is valid; and how the agreement can be modified or terminated.
- Section 408.1215 explains how you establish eligibility for State recognition payments. Under this section, your application for SVB under subpart C of this part is also an application for any Federally administered State recognition payments for which you may be eligible. We determine your eligibility for and the amount of your recognition payments using the rules in subparts A through K of part 408 of our regulations.
- Section 408.1220 explains that we pay State recognition payments on a monthly basis and include them with your SVB monthly payment.
- Section 408.1225 explains that if you receive an overpayment of State recognition payments, we will adjust future recognition payments to which you are entitled. Under this section, the rules we follow on recovery (or waiver) of SVB overpayments (see §§ 408.910 through 408.941) also apply to State recognition payments.
- Section 408.1226 explains that, if you are underpaid, we will pay the underpayment directly to you.
- Section 408.1230 explains that you can waive your right to State recognition payments by making a written request.
- Section 408.1235 explains that a State must transfer to SSA each month the amounts of its estimated recognition payments and administrative fees on the established transfer date. This section also provides for SSA to account for the funds it receives from the State and permits the State to audit the payments we make under the agreement.

Conforming Changes on Overpayments

As indicated above, § 408.930 of these final rules reflects the authority in section 808(a)(1)(B) of the Act to adjust your title II benefits to recover a title VIII overpayment. To conform to this change, we are also revising our title II rules at § 404.401(c) to explain that we may adjust your title II benefits to recover a title VIII overpayment. The NPRM also included a proposed revision to § 416.570 to indicate that we will not adjust your SSI benefits to recover an SVB overpayment unless you specifically request us to do so. However, this revision was previously made in final rules that were published on June 4, 2002 (67 FR 38383). We have, therefore, removed this duplicate revision from these final rules.

Public Comments

On November 5, 2003, we published proposed rules in the **Federal Register** at 68 FR 62670 and provided a 60-day period for interested parties to comment. We received no comments. We are, therefore, publishing these rules substantially unchanged. We made a few technical corrections described above, added 31 U.S.C. 3720A to the list

of authorities for subpart I, and made a few additional revisions to improve readability.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

We have also determined that these final rules meet the plain language requirement of Executive Order 12866 as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant impact on a substantial number of small entities since they affect only individuals claiming benefits under title VIII of the Act. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 specifies that no one is required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in 20 CFR 408, subparts G, H, I, J and L of these final rules. The OMB Control Number for these collections is 0960–0683, expiring January 31, 2007.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; 96.020, Special Benefits for Certain World War II Veterans)

List of Subjects 20 CFR Part 404

Administrative practice and procedure; Death benefits; Blind, Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

List of Subjects 20 CFR Part 408

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements, Social security; Special veterans benefits; Veterans.

Dated: April 28, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

■ 1. The authority citation for subpart E of part 404 is amended to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5), 808 and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5), 1008 and 1320a–8a).

■ 2. Section 404.401 is amended by revising paragraph (c) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(c) *Adjustments.* We may adjust your benefits to correct errors in payments under title II of the Act. We may also adjust your benefits if you received more than the correct amount due under titles VIII or XVI of the Act. For the title II rules on adjustment to your benefits, see subpart F of this part. For the rules on adjusting your benefits to recover title VIII overpayments, see § 408.930 of this chapter. For the rules on adjusting your benefits to recover title XVI overpayments, see § 416.572 of this chapter.

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PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

■ 3. The authority citation for subpart A continues to read as follows:

Authority: Secs. 702(a)(5) and 801–813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001–1013).

■ 4. Section 408.101 is amended by adding new paragraphs (f) through (l) to read as follows:

§ 408.101 What is this part about?

* * * * *

(f) Subpart F is reserved for future use.

(g) Subpart G contains the provisions on your requirement to report certain events to us.

(h) Subpart H contains the provisions on suspension and termination of title VIII entitlement.

(i) Subpart I contains the provisions on underpayments and overpayments.

(j) Subpart J contains the provisions on determinations and the administrative review process.

(k) Subpart K contains the provisions on claimant representation.

(l) Subpart L contains the provisions on Federal administration of State recognition payments.

■ 5. Subparts F, G, H, I, J, K, and L are added to part 408 to read as follows:

* * * * *

Subpart F—[Reserved]

Subpart G—Reporting Requirements

Sec.

Subpart H—Suspensions and Terminations

Subpart I—Underpayments and Overpayments

General Rules

Waiver of Recovery of SVB Overpayments

* * * * *

Subpart F—[Reserved]

Subpart G—Reporting Requirements

Authority: Secs. 702(a)(5), 802, 803, 804, 806, 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1002, 1003, 1004, 1006, 1007, and 1010).

§ 408.701 What is this subpart about?

To achieve efficient administration of the Special Veterans Benefit (SVB) program, we require you (or your representative) to report certain events to us. It is important for us to know about these events because they may affect your right to receive SVB or the amount of your benefits. This subpart tells you what events you must report; what your reports must include; how you should make your report; and when reports are due.

§ 408.704 Who must make reports?

(a) If you receive your own benefits, you are responsible for making required reports to us.

(b) If you have a representative payee, and you have not been legally adjudged incompetent, either you or your representative payee must make the required reports.

(c) If you have a representative payee and you have been legally adjudged incompetent, you are not responsible for making reports to us; however, your representative payee is responsible for making required reports to us.

§ 408.708 What events must you report to us?

This section describes the events that you must report to us. They are—

(a) *A change of address or residence.* You must report to us any change in your mailing address and any change in your residence, *i.e.*, the address where you live.

(b) *A change in your other benefit income.* You must report to us any increase or decrease in your other benefit income as described in § 408.220.

(c) *Certain deaths.* (1) If you are a representative payee, you must report the death of the entitled individual.

(2) If you have a representative payee, you must report the death of your representative payee.

(d) *Entry into the United States.* You must report to us if you enter the United States to visit or live even if you have no intention of abandoning your residence outside the United States.

(e) *Removal (including deportation) from the United States.* You must report to us if you are removed (including deported) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.

(f) *Fleeing to avoid criminal prosecution or custody or confinement after conviction, or violating probation or parole.* You must report to us that you are—

(1) Fleeing to avoid prosecution, under the laws of the United States or the jurisdiction within the United States from which you flee, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction under the laws of the United States or the jurisdiction within the United States from which you flee, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

§ 408.710 What must your report include?

When you make a report, you must tell us—

(a) The name and social security number of the person to whom the report applies;

(b) The event you are reporting and the date it happened; and

(c) Your name if you are not the person to whom the report applies.

§ 408.712 How should you make your report?

You should make your report in any of the ways described in this section.

(a) *Written reports.* You may write a report on your own paper or on a printed form supplied by us. You may mail a written report or bring it to one of our offices.

(b) *Oral reports.* You may report to us by telephone, or you may come to one of our offices and tell one of our employees what you are reporting.

(c) *Other methods of reporting.* You may use any other suitable method of reporting—for example, a telegram or a cable.

§ 408.714 When are reports due?

(a) *A reportable event happens.* You should report to us as soon as an event listed in § 408.708 happens.

(b) *We request a report.* We may request a report from you if we need information to determine continuing entitlement or the correct amount of your SVB payments. If you do not make the report within 30 days of our written request, we may determine that you may not continue to receive SVB. We will suspend your benefits effective with the month following the month in which we determine that you are not entitled to receive SVB because of your failure to give us necessary information (*see* § 408.803).

Subpart H—Suspensions and Terminations

Authority: Secs. 702(a)(5) and 810(d) of the Social Security Act (42 U.S.C. 902(a)(5) and 1010(d)).

§ 408.801 What is this subpart about?

This subpart explains the circumstances that will result in suspension of your SVB payments or termination of your SVB entitlement.

Suspension

§ 408.802 When will we suspend your SVB payments?

(a) *When suspension is proper.* Suspension of SVB payments is required when you no longer meet the SVB qualification requirements (*see* subpart B of this part) and termination in accordance with §§ 408.814 through 408.818 does not apply. (This subpart does not cover suspension of payments for administrative reasons, as, for example, when mail is returned as undeliverable by the Postal Service and we do not have a valid mailing address for you or when your representative payee dies and a search is underway for a substitute representative payee.)

(b) *Effect of suspension.* When we correctly suspend your SVB payments, we will not resume them until you again meet all qualification requirements except the filing of a new application. If you request reinstatement, you are required to submit the evidence necessary to establish that you again meet all requirements for eligibility under this part. Your SVB payments will be reinstated effective with the first month in which you meet all requirements for eligibility except the filing of a new application.

§ 408.803 What happens to your SVB payments if you fail to comply with our request for information?

(a) *Effective date of suspension.* We will suspend your SVB payments effective with the month following the month in which we determine in accordance with § 408.714(b) that you may no longer receive SVB payments because you failed to comply with our request for necessary information.

(b) *Resumption of payments.* When we have information to establish that SVB is again payable, your benefit payments will be reinstated for any previous month for which you continue to meet the requirements of § 408.202.

(c) *When we will not suspend your payments.* We will not suspend your payments for failing to comply with our request for information for any month we can determine your eligibility for or the amount of your payment based on information on record. If we cannot determine your eligibility or the amount of your payment based on the information on record, we will send you a notice of suspension of payment because you failed to comply with our request for information in accordance with §§ 408.820 and 408.1005.

§ 408.806 What happens to your SVB payments if you are no longer residing outside the United States?

(a) *Suspension effective date.* We will suspend your SVB payments effective the first full calendar month you are no longer residing outside the United States.

(b) *Resumption of payments.* If otherwise payable, we will resume your SVB payments effective with the first full calendar month you are again residing outside the United States.

§ 408.808 What happens to your SVB payments if you begin receiving additional benefit income?

(a) *Suspension effective date.* We will suspend your SVB payments for any month your other benefit income (as described in § 408.220(a)) exceeds the maximum SVB amount payable for a month (see § 408.505(a)).

(b) *Resumption of payments.* If otherwise payable, we will resume your SVB payments effective with the first month your other benefit income is less than the maximum SVB amount payable for a month.

§ 408.809 What happens to your SVB payments if you are removed (including deported) from the United States?

(a) *Suspension effective date.* We will suspend your SVB payments effective with the month after the month in which we receive notice from the United States Citizenship and

Immigration Service that you have been removed (including deported) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.

(b) *Resumption of payments.* If otherwise payable, we will resume your SVB effective with the first month after the month of your removal that you were granted the status of a lawful permanent resident of the United States.

§ 408.810 What happens to your SVB payments if you are fleeing to avoid criminal prosecution or custody or confinement after conviction, or because you violate a condition of probation or parole?

(a) *Basis for suspension.* You may not receive SVB for any month during which you are—

(1) Fleeing to avoid prosecution under the laws of the United States or the jurisdiction within the United States from which you flee for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which you flee (or that, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(2) Fleeing to avoid custody or confinement after conviction under the laws of the United States or the jurisdiction within the United States from which you flee, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which you flee (or that, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(b) *Suspension effective date.* Suspension of SVB payments because you are a fugitive as described in paragraph (a)(1) or (a)(2) of this section or a probation or parole violator as described in paragraph (a)(3) of this section is effective with the first day of whichever of the following months is earlier—

(1) The month in which a warrant or order for your arrest or apprehension, an order requiring your appearance before a court or other appropriate tribunal (*e.g.*, a parole board), or similar order is issued by a court or other duly authorized tribunal in the United States on the basis of an appropriate finding that you—

(i) Are fleeing, or have fled, to avoid prosecution as described in paragraph (a)(1) of this section;

(ii) Are fleeing, or have fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this section;

(iii) Are violating, or have violated, a condition of your probation or parole as described in paragraph (a)(3) of this section; or

(2) The first month during which you fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of your probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal in the United States.

(c) *Resumption of payments.* If otherwise payable, we will resume your SVB payments beginning with the first month throughout which you are determined to be no longer fleeing to avoid prosecution, fleeing to avoid custody or confinement after conviction, or violating a condition of your probation or parole.

§ 408.812 What happens to your SVB payments if you are not a citizen or national of the United States and you begin residing in a Treasury-restricted country?

(a) *Suspension effective date.* If you are not a citizen or national of the United States, we will suspend your SVB payments effective with the first full calendar month you are residing in a country to which the Treasury Department restricts payments under 31 U.S.C. 3329.

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first day of the first month in which you are not residing in a Treasury-restricted country.

Termination

§ 408.814 Can you request termination of your SVB entitlement?

You, your legal guardian, or your representative payee, may voluntarily terminate your SVB entitlement by filing a written request for termination. If your representative payee requests termination, it must be shown that no hardship would result to you if the request is processed. When a termination request is filed, your SVB entitlement ends effective with the month following the month you file your request with us unless you specify some other month. However, we will not terminate your entitlement for any month for which payment has been or will be made unless you repay (or there is an assurance you will repay) any amounts paid for those months. When we process a voluntary request for termination of your SVB entitlement, we will send you a notice of our determination in accordance with § 408.1005. Once terminated, your entitlement can be reestablished only if you file a new application, except as provided by § 408.1009.

§ 408.816 When does SVB entitlement end due to death?

Your SVB entitlement ends with the month in which you die. Payments are terminated effective with the month after the month of death.

§ 408.818 When does SVB entitlement terminate if your benefit payments have been in suspense for 12 consecutive months?

We will terminate your SVB entitlement following 12 consecutive months of benefit suspension for any reason beginning with the first month you were no longer entitled to SVB. We will count the 12-month suspension period from the start of the first month that you are no longer entitled to SVB (*see* § 408.802(a)). This termination is effective with the first day of the 13th month after the suspension began.

§ 408.820 Will we send you a notice of intended action affecting your SVB payment status?

(a) *Advance written notice requirement.* Before we suspend, reduce (*see* subpart E of this part), or terminate your SVB payments, we will send you a written notice explaining our intention to do so, except where we have factual information confirming your death, *e.g.*, as specified in § 404.704(b) of this chapter, or a report by a surviving spouse, a legal guardian, a parent or other close relative, or a landlord.

(b) *Continuation of payment pending an appeal.* The written notice of our intent to suspend, reduce, or terminate payments will give you 60 days after the date you receive the notice to request the appropriate appellate review. If your benefit payments are reduced or suspended and you file an appeal within 10 days after you receive the notice, payments will be continued or reinstated at the previously established payment level (subject to the effects of intervening events on the payment which are not appealed within 10 days of receipt of a required advance notice or which do not require advance notice, *e.g.*, an increase in the benefit amount) until a decision on your initial appeal is issued, unless you specifically waive in writing your right to continuation of payment at the previously established level in accordance with paragraph (c) of this section. Where the request for the appropriate appellate review is filed more than 10 days after the notice is received but within the 60-day period specified in § 408.1009 of this part, you have no right to continuation or reinstatement of payment at the

previously established level unless you establish good cause under the criteria specified in § 408.1011 of this part for failure to appeal within 10 days after receipt of the notice. For purposes of this paragraph, we will presume you received our notice of intent to suspend, reduce, or terminate payments 5 days after the date on the face of the notice, unless there is a reasonable showing to the contrary.

(c) *Waiver of right to continued payment.* In order to avoid the possibility of an overpayment of benefits, you may waive continuation of payment at the previously established level (subject to intervening events which would have increased the benefit for the month in which the incorrect payment was made, in which case the higher amount shall be paid), after you receive a full explanation of your rights. Your request for waiver of continuation of payment must be in writing, state that waiver action is being initiated solely at your request, and state that you understand your right to receive continued payment at the previously established level.

Subpart I—Underpayments and Overpayments

Authority: Secs. 702(a)(5) and 808 of the Social Security Act (42 U.S.C. 902(a)(5) and 1008); 31 U.S.C. 3720A.

General Rules

§ 408.900 What is this subpart about?

This subpart explains what happens when you receive less or more than the correct amount of SVB than you are entitled to receive. Sections 408.901 through 408.903 define overpayment and underpayment and describe how we determine the amount of the overpayment or underpayment. When you receive less than the correct amount of SVB (which we refer to as an underpayment), we will take the actions described in §§ 408.904 and 408.905. Waiver of recovery of overpayments (payments of more than the correct amount) is discussed in §§ 408.910 through 408.914, and the methods we use to recover overpayments are discussed in §§ 408.920 through 408.946. In § 408.950, we explain when we will accept a compromise settlement of an overpayment or suspend or terminate collection of an overpayment.

§ 408.901 What is an underpayment?

(a) An underpayment can occur only with respect to a period for which you filed an application for benefits and met all conditions of eligibility for benefits.

(b) An underpayment is:

(1) Nonpayment, where payment was due but was not made; or

(2) Payment of less than the amount due for a period.

(c) For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury. Payment is not considered to have been made where payment has not been received by the designated payee, or where payment was returned.

§ 408.902 What is an overpayment?

As used in this subpart, the term overpayment means payment of more than the amount due for any period. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury. Payment is not considered to have been made where payment has not been received by the designated payee, or where payment was returned.

§ 408.903 How do we determine the amount of an underpayment or overpayment?

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount you are paid and the amount you are due for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month in which we make the initial determination of the overpayment or underpayment. With respect to the period established, there can be no underpayment to you if we paid you more than the correct amount of SVB, even though we waived recovery of any overpayment to you for that period under the provisions of §§ 408.910 through 408.914. A later initial determination of an overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such prior determination to the extent that the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of an underpayment.* Where we have detected a potential overpayment but we have not made a determination of the overpayment (*see* § 408.918(a)), we will not delay making a determination of underpayment and paying you unless we can make an overpayment determination before the close of the month following the month in which we discovered the potential underpayment.

(c) *Delay in payment of underpayment to ineligible individual.* If you are no longer entitled to SVB, we will delay a determination and payment of an underpayment that is otherwise due you so that we can resolve all overpayments, incorrect payments, and adjustments.

§ 408.904 How will you receive an underpayment?

We will pay you the amount of any underpayment due you in a separate payment or by increasing the amount of your monthly payment. If you die before we pay you all or any part of an underpayment, the balance of the underpayment reverts to the general fund of the U.S. Treasury.

§ 408.905 Will we withhold or adjust an underpayment to reduce an overpayment if that overpayment occurred in a different period?

We will withhold or adjust any underpayment due you to reduce any overpayment to you that we determine for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 408.910 through 408.914.

Waiver of Recovery of SVB Overpayments

§ 408.910 When will we waive recovery of an SVB overpayment?

We will waive recovery of an overpayment when:

(a) You are without fault in connection with the overpayment, and

(b) Recovery of such overpayment would either:

(1) Defeat the purpose of the title VIII program, or

(2) Be against equity and good conscience.

§ 408.911 What happens when we waive recovery of an SVB overpayment?

Waiver of recovery of an overpayment from you (or, after your death, from your estate) frees you and your estate from the obligation to repay the amount of the overpayment covered by the waiver. *Example:* You filed for waiver of recovery of a $600 overpayment. We found that you are eligible for waiver of recovery of $260 of that amount. Only $340 of the overpayment would be recoverable from you or your estate.

§ 408.912 When are you without fault regarding an overpayment?

(a) *General—when fault is relevant.* If you request waiver of recovery of an overpayment, we must determine whether you were without fault. You are not relieved of liability and are not without fault solely because we may have been at fault in making the overpayment.

(b) *The factors we consider to determine whether you were without fault.* When we determine whether you were without fault, we consider all the pertinent circumstances relating to the overpayment. We consider your understanding of your obligation to give us information affecting your payments, your agreement to report events, your knowledge of the occurrence of events that should have been reported, the efforts you made to comply with the reporting requirements, the opportunities you had to comply with the reporting requirements, your ability to comply with the reporting requirements (*e.g.*, your age, comprehension, memory, physical and mental condition), and your understanding of the obligation to return payments that were not due. In determining whether you are without fault based on these factors, we will take into account any physical, mental, educational, or language limitations (including any lack of facility with the English language) you may have. We will determine that you were at fault if, after considering all of the circumstances, we find that the overpayment resulted from one of the following:

(1) Your failure to furnish information which you knew or should have known was material;

(2) An incorrect statement you made which you knew or should have known was incorrect (this includes furnishing your opinion or conclusion when you were asked for facts), or

(3) You did not return a payment, which you knew, or could have been expected to know, was incorrect.

§ 408.913 When would overpayment recovery defeat the purpose of the title VIII program?

We will waive recovery of an overpayment when you are without fault (as defined in § 408.912) and recovery of the overpayment would defeat the purpose of the title VIII program. Recovery of an overpayment would defeat the purpose of the title VIII program to the extent that our recovery action would deprive you of income and resources you need to meet your ordinary and necessary living expenses as described in § 404.508(a) of this chapter.

§ 408.914 When would overpayment recovery be against equity and good conscience?

We will waive recovery of an overpayment when you are without fault (as defined in § 408.912) and recovery would be against equity and good conscience. Recovery would be against equity and good conscience if you changed your position for the worse or gave up a valuable right in reliance on our notice that payment would be made or because of the incorrect payment itself. *Example:* Upon our notice that you are eligible for SVB payments, you signed a lease on an apartment renting for $15 a month more than the one you previously occupied. You were subsequently found ineligible for SVB and no benefits are payable. In this case, recovery of the overpayment would be considered "against equity and good conscience."

Notices

§ 408.918 What notices will you receive if you are overpaid or underpaid?

(a) *Notice of overpayment or underpayment determination.* Whenever we determine that you were overpaid or underpaid for a given period, as defined in § 408.903, we will send you a written notice of the correct and incorrect amounts you received for each month in the period, even if part or all of the underpayment must be withheld in accordance with § 408.905. The notice of overpayment will advise you about recovery of the overpayment, as explained in §§ 408.920–408.923, and your rights to appeal the determination and to request waiver of recovery of the overpayment under the provisions of § 408.910.

(b) *Notice of waiver determination.* Written notice of an initial determination regarding waiver of recovery will be mailed to you in accordance with § 408.1005 unless you were not given notice of the overpayment in accordance with paragraph (a) of this section.

Refund of Overpayments

§ 408.920 When will we seek refund of an SVB overpayment?

We will seek refund of an SVB overpayment in every case in which we have not waived recovery. An overpayment may be refunded by you or by anyone on your behalf. If you are receiving SVB currently and you have not refunded the overpayment, adjustment as set forth in § 408.922 will be proposed. If you die before we recover the full overpayment, we will seek refund of the balance from your estate.

Adjustment of SVB

§ 408.922 When will we adjust your SVB payments to recover an overpayment?

If you do not refund your overpayment to us, and waiver of recovery is not applicable, we will adjust any SVB payments due you to recover the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 408.923 from the benefit payable to you.

§ 408.923 Is there a limit on the amount we will withhold from your SVB payments to recover an overpayment?

(a) *Amount of the withholding limit.* Except as provided in paragraphs (b) and (c) of this section, the amount we will withhold from your monthly SVB payment to recover an overpayment is limited to the lesser of (1) the amount of your Federal SVB payment or (2) an amount equal to 10 percent of the maximum SVB monthly payment amount as defined in § 408.505(a).

(b) Your right to request a different rate of withholding. When we notify you of the rate we propose to withhold from your monthly SVB payment, we will give you the opportunity to request a higher or lower rate of withholding than that proposed. If you request a rate of withholding that is lower than the one established under paragraph (a) of this section, we will set a rate that is appropriate to your financial condition after we evaluate all the pertinent facts. An appropriate rate is one that will not deprive you of income required for ordinary and necessary living expenses. We will evaluate your income, resources, and expenses as described in § 404.508 of this chapter.

(c) *Fraud, misrepresentation or concealment of material information.* If we determine that there was fraud, willful misrepresentation, or concealment of material information by you in connection with the overpayment, the limits in paragraph (a)(2) of this section do not apply and we will not lower the rate of withholding under paragraph (b) of this section. Concealment of material information means an intentional, knowing, and purposeful delay in making or in failing to make a report that will affect your SVB payment amount and/or eligibility. It does not include a mere omission on your part; it is an affirmative act to conceal.

Adjustment of Title II Benefits

§ 408.930 When will we adjust your title II benefits to recover an SVB overpayment?

(a) *General rule.* Except as provided in paragraph (c) of this section, we will adjust your title II benefits payable in a month to recover the SVB overpayment if you are not currently eligible to receive SVB payments and you are receiving title II benefits.

(b) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the actual

amount of title II benefits you would receive in that month. It includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter.

(c) *When we will not adjust your title II benefits.* We will not adjust your title II benefits to recover an SVB overpayment if:

(1) You are refunding your SVB overpayment by regular monthly installments, or

(2) We are recovering a title II overpayment by adjusting your title II benefits, or

(3) We are recovering a title XVI overpayment by adjusting your title II benefits under § 416.572 of this chapter.

§ 408.931 How much will we withhold from your title II benefits to recover an SVB overpayment?

(a) *Amount of withholding.* Except as provided in paragraphs (b) and (c) of this section, any recovery of an SVB overpayment from title II benefits in any month is limited to 10 percent of the title II benefit payable to you in that month.

(b) *Your right to request a different rate of withholding.* When we notify you of the proposed rate of withholding, we will give you the opportunity to request a higher or lower rate of withholding than that proposed. If you request a lower rate of withholding, we will set a rate in accordance with the rules in § 408.923(b).

(c) *When we will withhold the full amount of your title II benefits.* We will withhold the full amount of title II benefits payable to you in a month if you willfully misrepresented or concealed material information in connection with the overpayment as described in § 408.923(c).

§ 408.932 Will you receive a notice of our intention to adjust your title II benefits to recover an SVB overpayment?

Before we collect an SVB overpayment by adjusting your title II benefits, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by adjusting your title II benefits;

(b) We will withhold the amount described in § 408.931;

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount (this notice will not include this paragraph when § 408.931(c) applies); and

(e) You may ask us to waive collection of this overpayment balance.

§ 408.933 When will we begin adjusting your title II benefits to recover an SVB overpayment?

We will begin adjusting your title II benefits no sooner than 30 calendar days after the date of the notice described in § 408.932.

(a) If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin adjusting your title II benefits.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin adjusting your title II benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin adjusting your title II benefits until we determine the amount we will withhold. This paragraph does not apply when § 408.931(c) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin adjusting your title II benefits before we review the matter and notify you of our decision in writing. See §§ 408.910–408.914.

Tax Refund Offset

§ 408.940 When will we refer an SVB overpayment to the Department of the Treasury for tax refund offset?

(a) *General.* The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due you to recover outstanding overpayments are set forth in §§ 408.940 through 408.946 of this subpart. These standards and procedures are authorized by 31 U.S.C. 3720A, as implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments from you only when you are not currently entitled to monthly SVB under title VIII of the Act, and we are not recovering your SVB overpayment from your monthly benefits payable under title II of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

§ 408.941 Will we notify you before we refer an SVB overpayment for tax refund offset?

We will make a request for collection by reduction of Federal income tax refunds only after we determine that you owe an overpayment that is past due and provide you with 60-calendar days written notice. Our notice of intent to collect an overpayment through Federal income tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, you repay the overpayment, send evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or ask us to waive collection of the overpayment under § 408.910, we intend to seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to you as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 808(c) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That you have the right to inspect and copy our records related to the overpayment as determined by us and you will be informed as to where and when the inspection and copying can be done after we receive notice from you requesting inspection and copying.

§ 408.942 Will you have a chance to present evidence showing that the overpayment is not past due or is not legally enforceable?

(a) *Notification.* If you receive a notice as described in § 408.941 of this subpart, you have the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, you must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* You may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless, within this 60-day time period, you ask us to waive collection of the overpayment under § 408.910 and we have not yet determined whether we can grant the

waiver request. If you ask us to waive collection of the overpayment, we may ask you to submit evidence to support your request.

(c) *Review of the evidence.* If you submit evidence on a timely basis, we will consider all available evidence related to the overpayment. We will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence.

(d) *Written findings.* We will issue our written findings including supporting rationale to you, your attorney or other representative. The findings will be our final action with respect to the past-due status and enforceability of the overpayment.

§ 408.943 What happens after we make our determination on your request for review or your request for waiver?

(a) If we make a determination that all or part of the overpayment is past due and legally enforceable and/or your waiver request cannot be granted, we will refer the overpayment to the Department of the Treasury for recovery from any Federal income tax refund due you. We will not suspend our referral of the overpayment to the Department of the Treasury under § 408.945 of this subpart pending any further administrative review of the waiver determination that you may seek.

(b) We will not refer the overpayment to the Department of the Treasury if we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of recovery of the overpayment is appropriate.

§ 408.944 How can you review our records related to an SVB overpayment?

(a) *What you must do.* If you intend to inspect or copy our records related to the overpayment, you must notify us stating your intention to inspect or copy.

(b) *What we will do.* If you notify us that you intend to inspect or copy our records related to the overpayment as described in paragraph (a) of this section, we will notify you of the location and time when you may do so. We may also, at our discretion, mail copies of the overpayment-related records to you.

§ 408.945 When will we suspend tax refund offset?

If, within 60 days of the date of the notice described in § 408.941 of this subpart, you notify us that you are exercising a right described in § 408.942(a) of this subpart and submit evidence pursuant to § 408.942(b) of this subpart or request a waiver under § 408.910 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

§ 408.946 What happens if your tax refund is insufficient to cover the amount of your SVB overpayment?

If your tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

Compromise Settlements, or Suspensions or Terminations of Collection

§ 408.950 Will we accept a compromise settlement of an overpayment debt or suspend or terminate collection of an overpayment?

(a) *General.* If we find that you do not, or your estate does not, have the present or future ability to pay the full amount of the overpayment within a reasonable time or the cost of collection is likely to exceed the amount of recovery, we may take any of the following actions, as appropriate.

(1) We may accept a compromise settlement (payment of less than the full amount of the overpayment) to discharge the entire overpayment debt.

(2) We may suspend our efforts to collect the overpayment.

(3) We may terminate our efforts to collect the overpayment.

(b) *Rules we apply.* In deciding whether to take any of the actions described in paragraph (a) of this section, we will apply the rules in § 404.515(b), (c), (d), (e), and (f) of this chapter and other applicable rules, including the Federal Claims Collection Standards (31 CFR 900.3 and parts 902 and 903).

(c) *Effect of compromise, suspension or termination.* When we suspend or terminate collection of the overpayment debt, we may take collection action in the future in accordance with provisions of the Social Security Act, other laws, and the standards set forth in 31 CFR chapter IX. A compromise settlement satisfies the obligation to repay the overpayment if you or your estate comply with the terms of the settlement.

Failure to make payment in the manner and within the time that we require in the settlement will result in reinstatement of our claim for the full amount of the overpayment less any amounts paid.

Subpart J—Determinations and the Administrative Review Process

Authority: Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

Introduction, Definitions, and Initial Determinations

§ 408.1000 What is this subpart about?

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your appeal rights under title VIII of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

(1) *Initial determination.* This is a determination we make about whether you qualify for and can become entitled to SVB or whether your SVB entitlement can continue. It can also be about any other matter, as discussed in § 408.1003, that gives you a right to further review.

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) *Appeals Council review.* If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.

(5) *Federal court review.* When you have completed the steps of the administrative review process listed in paragraphs (a)(1) through (a)(4) of this section, we will have made our final decision. If you are dissatisfied with our final decision, you may request judicial review by filing an action in a Federal district court.

(6) *Expedited appeals process.* At some time after your initial determination has been reviewed, if you have no dispute with our findings of fact and our application and interpretation of the controlling laws, but you believe that a part of the law is unconstitutional, you may use the expedited appeals process. This process permits you to go directly to a Federal district court so that the constitutional issue may be resolved.

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, nonadversary manner. In each step of the review process, you may present any information you feel is helpful to your case. Subject to the limitations on Appeals Council consideration of additional evidence, we will consider at each step of the review process any information you present as well as all the information in our records. You may present the information yourself or have someone represent you, including an attorney. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

§ 408.1001 Definitions.

As used in this subpart:

Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

Decision means the decision made by an administrative law judge or the Appeals Council.

Determination means the initial determination or the reconsidered determination.

Mass change means a State-initiated change in the level(s) of federally administered State recognition payments applicable to all recipients of such payments due, for example, to State legislative or executive action.

Remand means to return a case for further review.

SVB, for purposes of this subpart, includes qualification for SVB, entitlement to SVB and payments of SVB.

Vacate means to set aside a previous action.

Waive means to give up a right knowingly and voluntarily.

We, us, or our refers to the Social Security Administration.

You or your refers to any person claiming or receiving SVB.

§ 408.1002 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the important facts and give the reasons for our conclusions.

§ 408.1003 Which administrative actions are initial determinations?

Initial determinations regarding SVB include, but are not limited to, determinations about—

(a) Whether you qualify for SVB;

(b) Whether you are entitled to receive SVB payments on the basis of your residence outside the United States;

(c) The amount of your SVB payments;

(d) Suspension or reduction of your SVB payments;

(e) Termination of your SVB entitlement;

(f) Whether an overpayment of benefits must be repaid to us;

(e) Whether payments will be made, on your behalf, to a representative payee, unless you are legally incompetent;

(f) Who will act as your payee if we determine that representative payment will be made;

(g) A claim for benefits under § 408.351 based on alleged misinformation; and

(h) Our calculation of the amount of change in your federally administered State recognition payment amount (*i.e.*, a reduction, suspension, or termination) which results from a mass change as defined in § 408.1001.

§ 408.1004 Which administrative actions are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by this subpart and they are not subject to judicial review. These actions include, but are not limited to, an action about—

(a) Denial of a request to be made your representative payee;

(b) Denial of your request to use the expedited appeals process;

(c) Denial of your request to reopen a determination or a decision;

(d) Disqualifying or suspending a person from acting as your representative in a proceeding before us;

(e) Denial of your request to extend the time period for requesting review of a determination or a decision;

(f) Denial of your request to readjudicate your claim and apply an Acquiescence Ruling;

(g) Declining under § 408.351(f) to make a determination on a claim for benefits based on alleged misinformation because one or more of the conditions specified in § 408.351(f) are not met;

(h) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 408.943).

(i) The determination to reduce, suspend, or terminate your federally administered State recognition payments due to a State-initiated mass change, as defined in § 408.1001, in the levels of such payments, except as provided in § 408.1003(h).

§ 408.1005 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we will not send a notice if your benefits are stopped because of your death, or if the initial determination is a redetermination that your eligibility for benefits and the amount of your benefits have not changed.

(b) The notice that we send will tell you—

(1) What our initial determination is;

(2) The reasons for our determination; and

(3) What rights you have to a reconsideration of the determination.

(c) If our initial determination is that we must suspend, reduce your SVB payments or terminate your SVB entitlement, the notice will also tell you that you have a right to a reconsideration before the determination takes effect (see § 408.820).

§ 408.1006 What is the effect of an initial determination?

An initial determination is binding unless you request a reconsideration within the stated time period, or we revise the initial determination.

Reconsideration

§ 408.1007 What is reconsideration?

Reconsideration is the first step in the administrative review process that we provide if you are dissatisfied with the initial determination. If you are dissatisfied with our reconsideration determination, you may request a hearing before an administrative law judge.

§ 408.1009 How do you request reconsideration?

(a) *When you must file your request.* We will reconsider an initial determination if you file a written request within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section).

(b) *Where to file your request.* You can file your request for reconsideration at:

(1) Any of our offices;

(2) The Veterans Affairs Regional Office in the Philippines;

(3) An office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry; or

(4) A competent authority or agency of a country with which the United States has a totalization agreement (see § 404.1927 of this chapter).

(c) *When we will extend the time period to request a reconsideration.* If you want a reconsideration of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a reconsideration. You must make your request in writing and explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 408.1011.

§ 408.1011 How do we determine whether you had good cause for missing the deadline to request review?

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider—

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the explanation you requested Appeals Council review or filed a civil suit.

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit.

(7) You did not receive notice of the initial determination or decision.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known of the need to file timely, or which prevented you from filing timely.

§ 408.1013 What are the methods for reconsideration?

If you request reconsideration, we will give you a chance to present your case. How you can present your case depends upon the issue involved and whether you are asking us to reconsider an initial determination on an application or an initial determination on an SVB suspension, reduction or termination action. The methods of reconsideration include the following:

(a) *Case review.* We will give you an opportunity to review the evidence in our files and then to present oral and written evidence to us. We will then make a decision based on all of this evidence. The official who reviews the case will make the reconsidered determination.

(b) *Informal conference.* In addition to following the procedures of a case review, an informal conference allows you an opportunity to present witnesses. A summary record of this proceeding will become part of the case record. The official who conducts the informal conference will make the reconsidered determination.

(c) *Formal conference.* In addition to following the procedures of an informal conference, a formal conference allows you an opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses. A summary record of this proceeding will become a part of the case record. The official who conducts the formal conference will make the reconsidered determination.

§ 408.1014 What procedures apply if you request reconsideration of an initial determination on your application for SVB?

When you appeal an initial determination on your application for benefits, we will offer you a case review, and will make our determination on the basis of that review.

§ 408.1015 What procedures apply if you request reconsideration of an initial determination that results in suspension, reduction, or termination of your SVB?

If you have been entitled to SVB and we notify you that we are going to suspend, reduce or terminate your benefit payments, you can appeal our determination within 60 days of the date you receive our notice. The 60-day period may be extended if you have good cause for an extension of time under the conditions stated in § 408.1011(b). If you appeal, you have the choice of a case review, informal conference or formal conference.

§ 408.1016 What happens if you request a conference?

(a) As soon as we receive a request for a formal or informal conference, we will set the time, date and place for the conference. Formal and informal conferences are held only in the United States.

(b) We will send you a written notice about the conference (either by mailing it to your last known address or by personally serving you with it) at least 10 days before the conference. However, we may hold the conference sooner if we all agree. We will not send written notice of the time, date, and place of the conference if you waive your right to receive it.

(c) We will schedule the conference within 15 days after you request it, but, at our discretion or at your request, we will delay the conference if we think the delay will ensure that the conference is conducted efficiently and properly.

(d) We will hold the conference at one of our offices in the United States, by telephone or in person, whichever you prefer. However, if you are outside the United States, we will hold the conference by telephone only if you request that we do so and time and language differences permit. We will hold the conference in person elsewhere in the United States if you show circumstances that make this arrangement reasonably necessary.

§ 408.1020 How do we make our reconsidered determination?

After you request a reconsideration, we will review the evidence considered in making the initial determination and any other evidence we receive. We will make our determination based on this evidence. The person who makes the reconsidered determination will have had no prior involvement with the initial determination.

§ 408.1021 How does the reconsidered determination affect you?

The reconsidered determination is binding unless—

(a) You request a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.

§ 408.1022 How will we notify you of our reconsidered determination?

We will mail a written notice of the reconsidered determination to you at your last known address. We will state the specific reasons for the determination and tell you about your right to a hearing. If it is appropriate, we will also tell you how to use the expedited appeals process.

Expedited Appeals Process

§ 408.1030 When can you use the expedited appeals process?

(a) *General rules.* Under the expedited appeals process (EAP), you may go directly to a Federal District Court without first completing the administrative review process. For purposes of this part, we use the same EAP rules we use in the title XVI program (see §§ 416.1423–416.1428 of this chapter) except as noted in paragraph (b) of this section.

(b) *Exceptions.* In § 416.1425, the words "one of our offices" in paragraph (b) are deemed to read "any of the offices listed in § 408.1009(b)" and the reference in the last sentence of paragraph (c) to "§ 416.1411" is deemed to read "§ 408.1011."

Hearing Before an Administrative Law Judge

§ 408.1040 When can you request a hearing before an administrative law judge (ALJ)?

(a) *General rules.* For purposes of this part, we use the same rules on hearings before an administrative law judge (ALJ) that we use in the title XVI program (*see* §§ 416.1429–1416.1440 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* In § 416.1433, the words "one of our offices" in paragraph (b) are deemed to read "any of the offices listed in § 408.1009(b)" and the reference in the last sentence of § 416.1433(c) to "§ 416.1411" is deemed to read "§ 408.1011."

Administrative Law Judge Hearing Procedures

§ 408.1045 What procedures apply if you request an ALJ hearing?

(a) *General rules.* For purposes of this part, we use the same rules on ALJ hearing procedures that we use in the title XVI program (see §§ 416.1444–416.1461 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* (1) In § 416.1446(b)(1), the last sentence does not apply under this part.

(2) In § 416.1452(a)(1)(i), the words "supplemental security income" are deemed to read "SVB."

(3) In § 416.1457, the provisions of paragraph (c)(4) do not apply under this part.

Appeals Council Review

§ 408.1050 When can you request Appeals Council review of an ALJ hearing decision or dismissal of a hearing request?

(a) *General rules.* For purposes of this part, we use the same rules on Appeals Council review that we use in the title XVI program (see §§ 416.1467–416.1482 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* (1) In § 416.1468(b), the words "one of our offices" in the third sentence are deemed to read "any of the offices listed in § 408.1009(b)."

(2) In § 416.1469(d), the last sentence does not apply under this part.

(3) In § 416.1471, paragraph (b) does not apply under this part.

(4) In § 416.1482, the reference to "§ 416.1411" in the last sentence is deemed to read "§ 408.1011."

Court Remand Cases

§ 408.1060 What happens if a Federal Court remands your case to the Commissioner?

For purposes of this part, we use the same rules on court remand cases that we use in the title XVI program (see §§ 416.1483–416.1485 of this chapter).

Reopening and Revising Determinations and Decisions

§ 408.1070 When will we reopen a final determination?

(a) *General rules.* For purposes of this part, we use the same rules on reopening and revising determinations and decisions that we use in the title XVI program (see §§ 416.1487–416.1494 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* (1) In addition to the rule stated in §416.1488, a determination, revised determination, or revised decision may be reopened at any time if it was wholly or partially unfavorable to you, but only to correct—

(i) A clerical error; or

(ii) An error that appears on the face of the evidence that we considered when we made the determination or decision.

(2) In § 416.1492(b), the parenthetical clause is deemed to read "(see § 408.820)," and paragraph (d) does not apply to this part.

(3) In § 416.1494, the words "one of our offices" in the first sentence are deemed to read "any of the offices listed in § 408.1009(b)."

Subpart K—Representation of Parties

Authority: Secs. 702(a)(5) and 810(a) of the Social Security Act (42 U.S.C. 902(a)(5) and 1010(a)).

§ 408.1101 Can you appoint someone to represent you?

(a) *General rules.* You may appoint someone to represent you in any of your dealings with us. For purposes of this part, the rules on representation of parties in §§ 416.1500–416.1505, 416.1507–416.1515 and 416.1540–416.1599 of this chapter apply except as noted in paragraph (b) of this section.

(b) *Exceptions.* For purposes of this part:

(1) In § 416.1500, paragraph (c) does not apply.

(2) The last sentence of § 416.1503 is deemed to read: "You refers to any person claiming or receiving SVB."

(3) In § 416.1507(c), the words "one of our offices" are deemed to read "any of the offices listed in § 408.1009(b)."

(4) In § 416.1510(b), the reference to "title XVI of the Act" is deemed to read "title VIII of the Act," and the reference to "§ 416.315" is deemed to read "§ 408.315."

(5) In § 416.1540, the parenthetical clause in paragraph (b), the second sentences in paragraphs (b)(1) and (b)(2), and paragraph (c)(2) do not apply, and the references to "§ 416.1411(b)" in paragraphs (c)(4) and (c)(7)(i) are deemed to read "§ 408.1011(b)."

(6) In § 416.1545, paragraph (c) does not apply.

(7) In § 416.1599, paragraph (d) is deemed to read: "The Appeals Council will not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of our regulations."

Subpart L—Federal Administration of State Recognition Payments

Authority: Secs. 702(a)(5) and 810A of the Social Security Act (42 U.S.C. 902(a)(5) and 1010a).

§ 408.1201 What are state recognition payments?

(a) *State recognition payments; defined.* State recognition payments are any payments made by a State or one of its political subdivisions to an individual who is entitled to SVB, if the payments are made:

(1) As a supplement to monthly SVB payments; and

(2) Regularly, on a periodic recurring, or routine basis of at least once a quarter; and

(3) In cash, which may be actual currency, or any negotiable instrument convertible into cash upon demand.

(b) *State; defined.* For purposes of this subpart, State means a State of the United States or the District of Columbia.

§ 408.1205 How can a State have SSA administer its State recognition payment program?

A State (or political subdivision) may enter into a written agreement with SSA, under which SSA will make recognition payments on behalf of the State (or political subdivision). The regulations in effect for the SVB program also apply in the Federal administration of State recognition payments except as necessary for the effective and efficient administration of both the SVB program and the State's recognition payment program.

§ 408.1210 What are the essential elements of an administration agreement?

(a) *Payments.* The agreement must provide that recognition payments can only be made to individuals who are receiving SVB payments.

(b) *Administrative costs.*

(1) *General rule.* SSA will assess each State that elects Federal administration of its recognition payments an administration fee for administering those payments.

(2) *Determining the administration fee.* The administration fee is assessed and paid monthly and is derived by multiplying the number of State recognition payments we make on behalf of a State for any month in a fiscal year by the applicable dollar rate for the fiscal year. The number of recognition payments we make in a month is the total number of checks we issue, and direct deposits we make, to recipients in that month, that are composed in whole or in part of State recognition funds. The dollar amounts are as follows:

(i) For fiscal year 2001, $8.10;

(ii) For fiscal year 2002, $8.50; and

(iii) For fiscal year 2003 and each succeeding fiscal year—

(A) The applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

(B) A different rate if the Commissioner determines the different rate is appropriate for the State considering the complexity of administering the State's recognition payment program.

(c) *Agreement period.* The agreement period for a State that has elected Federal administration of its recognition payments extends for one year from the date the agreement was signed unless otherwise designated in the agreement. The agreement will be automatically renewed for a period of one year unless either the State or SSA gives written notice not to renew, at least 90 days before the beginning of the new period. For a State to elect Federal administration of its recognition payment program, it must notify SSA of its intent to enter into an agreement, furnishing the necessary payment specifications, at least 120 days before the first day of the month for which it wishes Federal administration to begin, and have executed such agreement at least 30 days before such day.

(d) *Modification or termination.* The agreement may be modified at any time by mutual consent. The State or SSA may terminate the agreement upon 90 days' written notice to the other party, provided the effective date of the termination is the last day of a quarter. However, the State may terminate the agreement upon 45 days written notice to SSA if: (1) The State does not wish to comply with a regulation promulgated by SSA after the execution of the agreement; and (2) the State provides its written notice within 30 days of the effective date of the regulation. The Commissioner is not precluded from terminating the agreement in less than 90 days if the State has failed to materially comply with the provisions of § 408.1235 on State transfer of funds to SSA.

§ 408.1215 How do you establish eligibility for Federally administered State recognition payments?

(a) *Applications.* When you file an application for SVB under subpart C of this part, you are deemed to have filed an application for any Federally administered State recognition payments for which you may be eligible unless you waive your right to such payments as provided for in § 408.1230. However, you will be required to give us a supplemental statement if additional information is necessary to establish your eligibility or to determine the correct amount of your State recognition payment.

(b) *Evidence requirements.* The evidence requirements and developmental procedures of this part also apply with respect to Federally administered State recognition payments.

(c) *Determination.* Where not inconsistent with the provisions of this subpart, we determine your eligibility for and the amount of your State recognition payment using the rules in subparts A through K of this part.

§ 408.1220 How do we pay Federally administered recognition payments?

(a) *Payment procedures.* We make Federally administered State recognition payments on a monthly basis and we include them in the same check as your SVB payment. The State recognition payment is for the same month as your SVB payment.

(b) *Maximum amount.* Except as specified in paragraph (c) of this section, there is no restriction on the amount of a State recognition payment that SSA will administer on behalf of a State.

(c) *Minimum amount.* SSA will not administer State recognition payments in amounts less than $1 per month. Hence, recognition payment amounts of less than $1 will be raised to a dollar.

§ 408.1225 What happens if you receive an overpayment?

If we determine that you received an overpayment, we will adjust future Federally administered State recognition payments you are entitled to. Our rules and requirements (see §§ 408.910 through 408.941) that apply to recovery (or waiver) of SVB overpayments also apply to the recovery (or waiver) of Federally administered State recognition overpayments. If your entitlement to State recognition payments ends before you have repaid the overpayment, we will annotate your record (specifying the amount of the overpayment) to permit us to recoup the overpaid amount if you become reentitled to recognition payments from the same State.

§ 408.1226 What happens if you are underpaid?

If we determine that you are due an underpayment of State recognition payments, we will pay the amount you were underpaid directly to you, or to your representative.

§ 408.1230 Can you waive State recognition payments?

(a) *Waiver request in writing.* You may waive your right to receive State recognition payments if you make a written request. If you make your request before you become entitled to SVB, you will not be entitled to State recognition payments. If you make your request after you become entitled to SVB, your request will be effective with

the month we receive your request, or with an earlier month if you refund to us the amount of any recognition payment(s) we made to you for the earlier period.

(b) *Cancelling your waiver.* You may cancel your waiver of State recognition payments at any time by making a written request with us. The cancellation will be effective the month in which it is filed. The date your request is received in a Social Security office or the postmarked date, if the written request was mailed, will be the filing date, whichever is earlier.

§ 408.1235 How does the State transfer funds to SSA to administer its recognition payment program?

(a) *Payment transfer and adjustment.* (1) Any State that has entered into an agreement with SSA which provides for Federal administration of such State's recognition payments will transfer to SSA:

(i) An amount of funds equal to SSA's estimate of State recognition payments for any month which will be made by SSA on behalf of such State; and

(ii) An amount of funds equal to SSA's estimate of administration fees for any such month determined in the manner described in § 408.1210(b).

(3) In order for SSA to make State recognition payments on behalf of a State for any month as provided by the agreement, the estimated amount of State funds referred to in paragraph (a)(1)(i) of this section together with the estimated amount of administration fees referred to in paragraph (a)(1)(ii) of this section, for that month, must be on deposit with SSA on the State recognition payment transfer date, which is:

(i) the business day preceding the date that the Commissioner pays such monthly recognition payments; or

(ii) with respect to such monthly payments paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

(b) *Accounting of State funds.* (1) As soon as feasible after the end of each calendar month, SSA will provide the State with a statement showing, cumulatively, the total amounts paid by SSA on behalf of the State during the current Federal fiscal year; the fees charged by SSA to administer such recognition payments; the State's total liability; and the end-of-month balance of the State's cash on deposit with SSA.

(2) SSA will provide the State with an accounting of State funds received as State recognition payments and administration fees within three calendar months following the termination of an agreement under § 408.1210(d).

(3) Adjustments will be made because of State funds due and payable or amounts of State funds recovered for calendar months for which the agreement was in effect. Interest will be incurred by SSA and the States with respect to the adjustment and accounting of State recognition payments funds in accordance with applicable laws and regulations of the United States Department of the Treasury.

(c) *State audit.* Any State entering into an agreement with SSA which provides for Federal administration of the State's recognition payments has the right to an audit (at State expense) of the payments made by SSA on behalf of such State. The Commissioner and the State shall mutually agree upon a satisfactory audit arrangement to verify that recognition payments paid by SSA on behalf of the State were made in accordance with the terms of the administration agreement under § 408.1205. Audit findings will be resolved in accordance with the provisions of the State's agreement with SSA.

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Monday,
May 10, 2004

Part III

Office of Management and Budget

Cost Principles for Educational Institutions; State, Local, and Indian Tribal Governments; and Non-Profit Organizations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Educational Institutions; State, Local, and Indian Tribal Governments; and Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Revisions to OMB Circulars A–21, A–87 and A–122.

SUMMARY: The Office of Management and Budget (OMB) amends the cost principles in OMB Circulars A–21, A–87 and A–122. These changes are intended to further the objectives of Public Law 106–107, the Federal Financial Assistance Management Improvement Act, ("the Act"). One of the actions taken by the agencies under the Act was to simplify the cost principles, making the descriptions of similar cost items consistent across the Circulars where possible, and reducing the possibility of misinterpretation.

DATES: These final cost principles are effective June 9, 2004.

ADDRESSES: OMB intends to keep these cost principles current with changes in laws, modifications to accounting standards and advances in technology. If you have comments on ways to improve these principles, please submit your comments to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Room 6025, Washington 20503. Due to potential delays in OMB's receipt and processing of mail sent thru the U.S. Postal Service, we encourage you to submit comments electronically to *hai_m._tran@omb.eop.gov* with your name, title, organization and postal address in the text of the message. You may also submit comments via facsimile by sending your comment to (202) 395–4915.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

SUPPLEMENTARY INFORMATION:

Background

The background for this effort was fully described in the preamble to the proposed changes to the circulars, published in the **Federal Register** on August 12, 2002 at 67 FR 52558. Briefly, the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107, "the Act") directs the Office of Management and Budget (OMB) and executive branch agencies to simplify and consolidate requirements and procedures for the receipt and administration of financial assistance. Federal financial assistance includes grants, cooperative agreements, loans, loan guarantees, scholarships, and other forms of assistance. The grant and cooperative agreement portion of Federal financial assistance, hereafter referred as "grants," involves more than 600 programs, with awards of more than $400 billion a year, administered by 26 Federal agencies.

Grant recipients deal with increasingly complex problems that require the delivery and coordination of many kinds of services. The support for these services increasingly comes from more than one Federal agency. Grant recipients' need to respond to the numerous Federal grant administration requirements of these agencies and programs only adds to that complexity.

OMB, working with the Department of Health and Human Services as lead agency and the Chief Financial Officers' Council, established an interagency group charged with reviewing the cost principles in Office of Management and Budget Circulars A–21 (A–21), Cost Principles for Educational Institutions, A–87 (A–87), Cost Principles for State, Local and Indian Tribal Governments, and A–122 (A–122), Cost Principles for Non-Profit Organizations. The goal of this group is to ensure that the cost principles in OMB Circulars A–21, A–87, and A–122 are current, consistent, and appropriate for covered recipients. The objectives of the group are to make the descriptions of similar cost items consistent, across the Circulars, where possible, and reduce the possibility of misinterpretation by clarifying existing policies rather than by adding restrictions or modifying current requirements.

Presentation of the Circulars

When we proposed the changes to the three circulars, we posted them on the OMB Web site (*http://www.omb.gov*) as a chart so that readers could easily compare the changes to the selected items of cost among the three circulars. We will again post a chart that displays the final revisions to the cost items across the three circulars so readers could easily compare the final outcomes to the circulars. In this **Federal Register** notice, we set out the specific changes to the selected items of cost of the three circulars separately. In addition, we will post on the OMB Web site the revised versions of the three circulars so that each community can see the final revisions incorporated into each cost principle circular.

Items for Future Consideration

In addition to comments on the proposed items, we received various comments for improvement to the circulars that were not included in our original proposal. We appreciated these comments. However, these recommendations are beyond the scope of the current project. We will consider them at a later phase of the cost consistency streamlining project.

Responses to Comments

We received 184 comments on the proposal: 147 from universities, 13 from State and local governments, 8 from Federal agencies, 4 from not-for-profit organizations and 12 other individuals and entities.

We have reviewed and given consideration to each comment in light of the overall objectives and goals of the project. Many comments resulted in changes in the proposed language while other comments resulted in the withdrawal of certain proposals. We believe that the final revisions accomplished our stated objectives to simplify the cost principles, making the description of similar items consistent and reducing the possibility of misunderstanding.

In summary, we made revisions to our proposed language for 24 cost items and withdrew proposed language for 6 cost items. Forty-five of the proposed changes are made final as proposed. The following chart summarizes the final actions to the proposed items. The detailed discussion of the comments and how those comments were resolved are presented on the OMB Web site along with the revised circulars and the final comparison chart. *See http://www.omb.gov.*

Dated: April 29, 2004.

Joshua B. Bolten,

Director.

Cost items in 3 circulars	Proposal	Adopted as proposed	Adopted as amended	Proposal withdrawn
1. Advertising and public relations	Consistent language across all 3 circulars		X	
2. Alcoholic beverages	No proposed change			X
3. Bad debts	Consistent language across all 3 circulars		X	

Cost items in 3 circulars	Proposal	Adopted as proposed	Adopted as amended	Proposal withdrawn
4. Communication costs	Consistent language across all 3 circulars		X	
5. Compensation for personal services	Various relocation of cost items into this section	X		
6. Contingency provisions	Consistent language across all 3 circulars		X	
7. Donations and contributions	Consistent language across all 3 circulars		X	
8. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.	No proposed change	X		
9. Depreciation and use allowances	Consistent language across all 3 circulars		X	
10. Employee morale, health, and welfare costs	Consistent language across all 3 circulars	X		
11. Entertainment costs	Consistent language across all 3 circulars	X		
12. Equipment and other capital expenditures	Consistent language across all 3 circulars		X	
13. Fines and penalties	Consistent language across all 3 circulars	X		
14. (Interest), Fund raising and investment management costs.	Consistent language across all 3 circulars			X
15. Insurance and indemnification	No proposed change	X		
16. Interest	Consistent language across all 3 circulars		X	
17. Gain and losses on depreciable assets	No proposed change	X		
18. Profits and losses on disposition of plant, equipment or other capital assets.	Rename to "Gain and losses on depreciable assets" in all 3 circulars.	X		
19. Lobbying	No proposed change	X		
20. Losses on other sponsored agreements or contracts.	No proposed change	X		
21. Maintenance and repair costs	Consistent language across all 3 circulars		X	
22. Material costs	Consistent language across all 3 circulars		X	
23. Memberships, subscriptions and professional activity costs.	Consistent language across all 3 circulars	X		
24. Pre-agreement costs	Consistent language across all 3 circulars			X
25. Professional service costs	Consistent language across all 3 circulars	X		
26. Rearrangement and alteration costs	Revised language to A–21	X		
27. Reconversion costs	Consistent language across all 3 circulars	X		
28. Rental costs of buildings and equipment	Consistent language across all 3 circulars		X	
29. Taxes	No proposed change	X		
30. Travel costs	Consistent language across all 3 circulars		X	

Cost items in only two circulars	Proposal	Adopted as proposed	Adopted as amended	Proposal withdrawn
1. Bonding costs	Consistent language across all 3 circulars	X		
2. Goods or services for personal use	Consistent language across all 3 circulars		X	
3. Housing and personal living expenses	No proposed change	X		
4. Idle facilities and idle capacity	Consistent language across all 3 circulars		X	
5. Labor relations costs	No proposed change	X		
6. Patent costs	Consistent language across all 3 circulars		X	
7. Plant security costs	Consistent language across all 3 circulars		X	
8. Proposal costs	No proposed change	X		
9. Publication and printing costs	Consistent language across all 3 circulars		X	
10. Recruiting costs	Consistent language across all 3 circulars			X
11. Royalties and other costs for use of patents	Consistent language across all 3 circulars	X		
12. Selling and marketing	Consistent language across all 3 circulars	X		
13. Severance pay	Relocate to the "Compensation for personal services" part of A–21 and A–122.	X		
14. Specialized service facilities	Consistent language to A–21 and A–122		X	
15. Termination costs applicable to sponsored agreements.	Consistent language across all 3 circulars		X	
16. Training	Consistent language across all 3 circulars		X	
17. Transportation costs	No proposed change	X		
18. Trustees	No proposed change	X		

Cost items in only one circular	Proposal	Adopted as proposed	Adopted as amended	Proposal withdrawn
1. Accounting	Deleted	X		
2. Advisory Councils	Consistent language across all 3 circulars	X		
3. Alumni/ae activities	No proposed change	X		
4. Audit costs and related services	Consistent language across all 3 circulars		X	
5. Automatic electronic data processing	Deleted	X		
6. Bid and Proposal costs	Deleted	X		
7. Budgeting	Deleted	X		
8. Civil defense costs	Deleted		X	

Cost items in only one circular	Proposal	Adopted as proposed	Adopted as amended	Proposal withdrawn
9. Commencement and convocation costs	No proposed change	X		
10. Deans of faculty and graduate schools	No proposed change	X		
11. Disbursing service	Deleted	X		
12. Executive lobbying costs	Consistent language across all 3 circulars under "lobbying".	X		
13. Fringe benefits	Deleted	X		
14. General government expenses	Revised language for A–87	X		
15. Independent research and development	Deleted	X		
16. Meeting and Conferences	Consistent language across all 3 circulars		X	
17. Motor pools	Deleted	X		
18. Organization costs	No proposed change	X		
19. Overtime, extra-pay shift, and multi shift premiums.	Consistent language across all 3 circulars			X
20. Page charges in professional journals	Consistent language across all 3 circulars		X	
21. Participant support costs	Consistent language across all 3 circulars			X
22. Pension plans	Deleted	X		
23. Relocation costs	Consistent language across all 3 circulars			X
24. Sabbatical leave costs	Relocate under "Compensation for personal services" of A–21.	X		
25. Scholarships and student aid costs	Proposed revision for A–21	X		
26. Student activity costs	No proposed change	X		
27. Under recovery of costs under Federal agreements.	Deleted	X		

Final Revisions

We amend Circulars A–21, A–87 and A–122 under the following three headings:

A. Amendments to Circular A–21.
B. Amendments to Circular A–87.
C. Amendments to Circular A–122.

A. Amendments to Circular A–21

1. Revise the table of contents for section J. to read as follows:

J. General provisions for selected items of cost
1. Advertising and public relations costs
2. Advisory councils
3. Alcoholic beverages
4. Alumni/ae activities
5. Audit costs and related services
6. Bad debts
7. Bonding costs
8. Commencement and convocation costs
9. Communication costs
10. Compensation for personal services
11. Contingency provisions
12. Deans of faculty and graduate schools
13. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
14. Depreciation and use allowances
15. Donations and contributions
16. Employee morale, health, and welfare costs
17. Entertainment costs
18. Equipment and other capital expenditures
19. Fines and penalties
20. Fundraising
21. Gains and losses on depreciable assets
22. Goods or services for personal use
23. Housing and personal living expenses
24. Idle facilities and idle capital
25. Insurance and indemnification
26. Interest
27. Labor relations costs
28. Lobbying
29. Losses on other sponsored agreements or contracts
30. Maintenance and repair costs
31. Material and supplies costs
32. Meetings and conferences
33. Memberships, subscriptions and professional activity costs
34. Patent costs
35. Plant and Homeland security costs
36. Pre-agreement costs
37. Professional service costs
38. Proposal costs
39. Publication and printing costs
40. Rearrangement and alteration costs
41. Reconversion costs
42. Recruiting costs
43. Rental costs of buildings and equipment
44. Royalties and other costs for use of patents
45. Scholarships and student aid costs
46. Selling and marketing
47. Specialized service facilities
48. Student activity costs
49. Taxes
50. Termination costs applicable to sponsored agreements
51. Training costs
52. Transportation costs
53. Travel costs
54. Trustees

2. Redesignate the sections in paragraph J. as follows:

a. Section J.2. is redesignated as section J.3.

b. Section J.3. is redesignated as section J.4.

c. Section J.6. is redesignated as section J.8.

d. Section J.8. is redesignated as section J.10.

e. Section J.40. is redesignated as section J.10.h.

f. Section J.10. is redesignated as section J.12.

g. Section J.11. is redesignated as section J.13.

h. Section J.19. is redesignated as section J.22.

i. Section J.20. is redesignated as section J.23.

j. Section J.21. is redesignated as section J.25.

k. Section J.13. is redesignated as section J.27.

l. Section J.24. is redesignated as section J.28.

m. Section J.25. is redesignated as section J.29.

n. Section J.31. is redesignated as section J.36.

o. Section J.34. is redesignated as section J.38.

p. Section J.37. is redesignated as section J.42.

q. Section J.45. is redesignated as section J.48.

r. Section J.46. is redesignated as section J.49.

s. Section J.47. is redesignated as section J.52.

t. Section J.50. is redesignated as section J.54.

3. Section J.1. is revised to read as follows:

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the institution or maintaining

or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those that are solely for:

(1) The recruitment of personnel required for the performance by the institution of obligations arising under a sponsored agreement (See also subsection b. of section J.42, Recruiting.);

(2) The procurement of goods and services for the performance of a sponsored agreement;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the sponsored agreement.

d. The only allowable public relations costs are:

(1) Costs specifically required by the sponsored agreement;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements (these costs are considered necessary as part of the outreach effort for the sponsored agreement); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, *etc.*

e. Costs identified in subsections c and d if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in sections D. ("Direct Costs") and E. ("F & A Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, 1.d, and 1.e;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the institution, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the institution.

4. Section J.2. is revised to read as follows:

2. Advisory councils.

Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to sponsored agreements.

5. Section J.5. is revised to read as follows:

5. *Audit costs and related services.*

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. *Also see* 31 U.S.C. 7505(b) and section __.230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section __.200(d) are allowable, subject to the conditions listed in A–133, section __.230(b)(2).

6. Section J.6. is revised to read as follows:

6. *Bad Debts.*

Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

7. Section J.7. is revised to read as follows:

7. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the institution. They arise also in instances where the institution requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the institution in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

8. Section J.9. is revised to read as follows:

9. *Communication costs.*

Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

9. Amend redesignated section J.10. by redesignating former section J.10.f.(4) as section J.10.f.(5), adding a new section J.10.f.(4), and adding a new section J.10.h. to read as follows:

10. *Compensation for personal services.*

* * * * *

f. Fringe benefits.

* * * * *

(4) Rules for sabbatical leave are as follows:

(a) Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution.

(b) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

* * * * *

h. Severance pay.

(1) Severance pay is compensation in addition to regular salary and wages which are paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

(2) Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of subsection a may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(3) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

(4) Costs incurred in excess of the institution's normal severance pay policy applicable to all persons employed by the institution upon termination of employment are unallowable.

20. Section J.11. is revised to read as follows:

11. *Contingency provisions.*

Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable, except as noted in the cost principles in this circular regarding self insurance, pensions, severance and post-retirement health costs.

11. Sections J.14. through 18. are revised to read as follows:

14. *Depreciation and use allowances.*

a. Institutions may be compensated for the use of their buildings, capital improvements, and equipment, provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F.2. Depreciation and use allowances are computed applying the following rules:

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the institution by a third party shall be its fair market value at the time of the donation.

c. For this purpose, the acquisition cost will exclude:

(1) the cost of land;

(2) any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located; and

(3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibits recovery.

d. In the use of the depreciation method, the following shall be observed:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method.

Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements. This requirement does not apply to those institutions (*e.g.*, public institutions of higher education) which are not required to record depreciation by applicable generally accepted accounting principles (GAAP).

(3) Where the depreciation method is introduced to replace the use allowance method, depreciation shall be computed as if the asset had been depreciated over its entire life (*i.e.*, from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The aggregate amount of use allowances and depreciation attributable to an asset (including imputed depreciation applicable to periods prior to the conversion to the use allowance method as well as depreciation after the conversion) may be less than, and in no case, greater than the total acquisition cost of the asset.

(4) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components shall be grouped into three general components of a building: building shell (including construction and design costs), building services systems (*e.g.*, elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (*e.g.*, sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a Federal cognizant agency may authorize an institution to use more than these three groupings. When an institutiton elects to depreciate its buildings by its components, the same depreciation methods must be used for F&A purposes and financial statement purposes, as described in subsection d.(2).

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (*See also* subsection e.(3))

e. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding two percent of acquisition cost.

The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. Use allowance recovery is limited to the acquisition cost of the assets. For donated assets, use allowance recovery is limited to the fair market value of the assets at the time of donation.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building.

The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets that meet these criteria will be subject to the 6⅔ percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

(4) Notwithstanding subsection e.(3), once an institution converts from one cost recovery methodology to another, acquisition costs not recovered may not

be used in the calculation of the use allowance in subsection e.(3).

f. Except as otherwise provided in subsections b. through e., a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

g. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

h. This section applies to the largest college and university recipients of Federal research and development funds as displayed in Exhibit A, List of Colleges and Universities Subject to Section J.14.f of Circular A–21.

(1) Institutions shall expend currently, or reserve for expenditure within the next five years, the portion of F&A cost payments made for depreciation or use allowances under sponsored research agreements, consistent with Section F.2, to acquire or improve research facilities. This provision applies only to Federal agreements, which reimburse F&A costs at a full negotiated rate. These funds may only be used for (a) liquidation of the principal of debts incurred to acquire assets that are used directly for organized research activities, or (b) payments to acquire, repair, renovate, or improve buildings or equipment directly used for organized research. For buildings or equipment not exclusively used for organized research activity, only appropriately proportionate amounts will be considered to have been expended for research facilities.

(2) An assurance that an amount equal to the Federal reimbursements has been appropriately expended or reserved to acquire or improve research facilities shall be submitted as part of each F&A cost proposal submitted to the cognizant Federal agency which is based on costs incurred on or after October 1, 1991. This assurance will cover the cumulative amounts of funds received and expended during the period beginning after the period covered by the previous assurance and ending with the fiscal year on which the proposal is based. The assurance shall also cover any amounts reserved from a prior period in which the funds received exceeded the amounts expended.

15. *Donations and contributions.*

a. Contributions or donations rendered.

Contributions or donations, including cash, property, and services, made by the institution, regardless of the recipient, are unallowable.

b. Donated services received.

Donated or volunteer services may be furnished to an institution by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or F&A cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with Circular A–110.

c. Donated property.

The value of donated property is not reimbursable either as a direct or F&A cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J.14. The value of donated property may be used to meet cost sharing or matching requirements, in accordance with Circular A–110.

16. *Employee morale, health, and welfare costs.*

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

c. Losses resulting from operating food services are allowable only if the institution's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only (a) where the institution can demonstrate unusual circumstances, and (b) with the approval of the cognizant Federal agency.

17. *Entertainment costs.*

Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

18. *Equipment and other capital expenditures.*

a. For purposes of this subsection, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, and land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the institution's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the institution for financial statement purposes, or $5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to subsections J.18.b.(1)

through (3), capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section J.14, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section J.43, Rental costs of buildings and equipment, for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

12. Sections J.20. and 21. are revised to read as follows:

20. *Fund raising and investment costs.*

a. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Costs related to the physical custody and control of monies and securities are allowable.

21. *Gain and losses on depreciable assets.*

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under section J.14.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Section J.24.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a shall be excluded in computing sponsored agreement costs.

c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

13. Section J.24. is revised to read as follows:

24. *Idle facilities and idle capacity.*

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) "Idle facilities" means completely unused facilities that are excess to the institution's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between:

(a) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and

(b) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other sponsored agreements, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

14. Section J.26. is revised to read as follows:

26. Interest.

a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the institution's own funds, however represented, are unallowable. However, interest on debt incurred after July 1, 1982 to acquire buildings, major reconstruction and remodeling, or the acquisition or fabrication of capital equipment costing $10,000 or more, is allowable.

b. Interest on debt incurred after May 8, 1996 to acquire or replace capital assets (including construction, renovations, alterations, equipment, land, and capital assets acquired through capital leases) acquired after that date and used in support of sponsored agreements is allowable, subject to the following conditions:

(1) For facilities costing over $500,000, the institution shall prepare, prior to acquisition or replacement of the facility, a lease-purchase analysis in accordance with the provisions of Sec.__.30 through__.37 of OMB Circular A–110, which shows that a financed purchase, including a capital lease is less costly to the institution than other operating lease alternatives, on a net present value basis. Discount rates used shall be equal to the institution's anticipated interest rates and shall be no higher than the fair market rate available to the institution from an unrelated ("arm's length") third-party. The lease-purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the institution. The cost comparisons

associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the defined period. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the defined period. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the institution directly or as part of the lease arrangement.

(2) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the institution from an unrelated (arm's length) third party.

(3) Investment earnings, including interest income on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(4) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subsection (1). For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease-purchase analysis is required to be performed, Federal reimbursement shall be based upon the least expensive alternative.

(5) For debt arrangements over $1 million, unless the institution makes an initial equity contribution to the asset purchase of 25 percent or more, the institution shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, institutions shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (*i.e.*, usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(6) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(7) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the institution from an unrelated (arm's length) third party.

c. Institutions are also subject to the following conditions:

(1) Interest on debt incurred to finance or refinance assets re-acquired after the applicable effective dates stipulated above is unallowable.

(2) Interest attributable to fully depreciated assets is unallowable.

d. The following definitions are to be used for purposes of this section:

(1) "Re-acquired" assets means assets held by the institution prior to the applicable effective dates stipulated above that have again come to be held by the institution, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) "Initial equity contribution" means the amount or value of contributions made by institutions for the acquisition of the asset prior to occupancy of facilities.

(3) "Asset costs" means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

15. Add a new subsection h. to the redesignated section J.28., to read as follows.

28. *Lobbying.*

* * * * *

h. Executive lobbying costs.

Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

16. Sections J.30. through 35. are revised to read as follows:

30. *Maintenance and repair costs.*

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (*see* section 18.a.(1)).

31. *Material and supplies costs.*

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a sponsored agreement are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the sponsored agreement, such materials will be used without charge.

32. *Meetings and conferences.*

Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items

incidental to such meetings or conferences. But *see* section J.17, Entertainment costs.

33. *Memberships, subscriptions and professional activity costs.*

a. Costs of the institution's membership in business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in any civic or community organization are unallowable.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

34. Patent costs.

a. The following costs relating to patent and copyright matters are allowable:

(1) Cost of preparing disclosures, reports, and other documents required by the sponsored agreement and of searching the art to the extent necessary to make such disclosures;

(2) Cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(3) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections J.37., Professional services costs, and J.44., Royalties and other costs for use of patents).

b. The following costs related to patent and copyright matter are unallowable:

(i) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the sponsored agreement does not require conveying title or a royalty-free license to the Federal Government, (but *see* section J.44, Royalties and other costs for use of patents).

35. *Plant and homeland security costs.*

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; *etc.* Capital expenditures for homeland and plant security purposes are subject to section J.18, Equipment and other capital expenditures, of this Circular.

17. Revise section J.37. to read as follows:

37. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the institution, are allowable, subject to subsections b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section J.13.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the institution's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to sponsored agreements.

(4) The impact of sponsored agreements on the institution's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-sponsored agreements.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subsection b, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

18. Sections J.39., J.40. and J.41. are revised to read as follows:

39. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the institution.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government: and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

40. *Rearrangement and alteration costs.*

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the sponsoring agency.

41. *Reconversion costs.*

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

19. Revise sections J.43. through J.47. to read as follows:

43. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the institution continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in subsection b) that would be allowed had title to the property vested in the institution. For this purpose, a less-than-arms-length

lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between—

(1) divisions of an institution;

(2) institutions under common control through common officers, directors, or members; and

(3) an institution and a director, trustee, officer, or key employee of the institution or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, an institution may establish a separate corporation for the sole purpose of owning property and leasing it back to the institution.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection b) that would be allowed had the institution purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section J.25. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the institution purchased the facility.

44. *Royalties and other costs for use of patents.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the institution.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a sponsored agreement would be made.

(3) Royalties paid under an agreement entered into after an award is made to an institution.

c. In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

45. *Scholarships and student aid costs.*

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that—

(1) The individual is conducting activities necessary to the sponsored agreement;

(2) Tuition remission and other support are provided in accordance with established educational institutional policy and consistently provided in a like manner to students in return for similar activities conducted in nonsponsored as well as sponsored activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a grantee or affiliated institution and the activities of the student in relation to the Federally-sponsored research project are related to the degree program;

(4) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) it is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J.10, and shall be treated as direct or F&A cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

46. *Selling and marketing.*

Costs of selling and marketing any products or services of the institution are unallowable (unless allowed under section J.1 as allowable public relations costs or under section J.38 as allowable proposal costs).

47. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the institution, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either subsection 47.b. or 47.c. and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under section C.5 of this Circular.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that

(1) does not discriminate against federally-supported activities of the institution, including usage by the institution for internal purposes, and

(2) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all F&A costs. Rates shall be adjusted at least biennially, and shall take into consideration over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as F&A costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

20. Section J.50. is revised to read as follows:

50. *Termination costs applicable to sponsored agreements.*

Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the sponsored agreement not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the sponsored agreement shall be limited to the extent that the quantities of such items on

hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the institution,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated sponsored agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the sponsored agreement bears to the entire terminated sponsored agreement and other sponsored agreements for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated sponsored agreement, less the residual value of such leases, if:

(1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the sponsored agreement and such further period as may be reasonable; and

(2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the sponsored agreement, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the sponsored agreement, unless the termination is for default (*see* Subpart __.61 of Circular A–110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the sponsored agreement, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with sections __.32 through __.37 of Circular A–110.

(3) F&A costs related to salaries and wages incurred as settlement expenses in subsections b.(1) and (2) of this section 50. Normally, such F&A costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under subawards, including the allocable portion of claims which are common to the sponsored agreement and to other work of the institution, are generally allowable.

An appropriate share of the institution's F&A costs may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in section E, F&A costs. The F&A costs so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

21. Add a new section J.51. to read as follows:

51. *Training costs.*

The cost of training provided for employee development is allowable.

22. Add a new section J.53. to read as follows:

53. *Travel costs.*

a. General.

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the institution's non-federally-sponsored activities.

b. Lodging and subsistence.

Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the institution in its regular operations as the result of the institution's written travel policy. In the absence of an acceptable, written institution policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under sponsored agreements (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) require circuitous routing;

(b) require travel during unreasonable hours;

(c) excessively prolong travel;

(d) result in additional costs that would offset the transportation savings; or

(e) offer accommodations not reasonably adequate for the traveler's medical needs. The institution must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question an institution's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the institution can demonstrate either of the following:

(a) That such airfare was not available in the specific case; or

(b) That it is the institution's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier.

Costs of travel by institution-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection J.53.c., is unallowable.

B. Amendments to Circular A–87

1. Revise Attachment A, section C.3.c., of OMB Circular A–87, to read as follows:

C. Basic Guidelines

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3. Allocable costs

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c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

2. Revise the table of contents to Attachment B as follows:

Attachment B.—Selected Items of Cost

Table of Contents

3. Redesignate the sections in Attachment B as follows:

a. Section 3. is redesignated as section 2.

b. Section 4. is redesignated as section 3.

c. Section 11. is redesignated as section 8.

d. Section 14. is redesignated as section 10.

e. Section 20. is redesignated as section 16.

f. Section 21. is redesignated as section 17.

g. Section 22. is redesignated as section 18.

h. Section 25. is redesignated as section 22.

i. Section 27. is redesignated as section 24.

j. Section 28. is redesignated as section 25.

k. Section 32. is redesignated as section 31.

l. Section 34. is redesignated as section 33.

m. Section 36. is redesignated as section 35.

n. Section 39. is redesignated as section 40.

o. Section 40. is redesignated as section 42.

4. Attachment B, section 1. is revised to read as follows:

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs.

Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when institutions are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, *etc.*

e. Costs identified in sections 1.c and 1.d, if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Attachment A, sections E. ("Direct Costs") and F. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c, d, and e;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

5. Attachment B, sections 4, 5, 6 and 7 are revised to read as follows:

4. *Audit costs and related services.*

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. *Also see* 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230(b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable. Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

6. Attachment B, section 9. is revised to read as follows:

9. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (*see* Attachment B, section 22.c.), pension plan reserves (*see* Attachment B, section 8.e.), and post-retirement health and other benefit reserves (*see* Attachment B, section 8.f.) computed using acceptable actuarial cost methods.

7. Attachment B, sections 11. through 15. are revised to read as follows:

11. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.*, buildings, office equipment, computer equipment, *etc.*) except as provided for in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used.

Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

e. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (*e.g.*, plumbing system, heating, and air conditioning system, *etc.*) and each major component depreciated over its estimated useful life, or the entire building (*i.e.*, the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (*e.g.*, plumbing system, heating and air condition, *etc.*) cannot be segregated from the building's shell.

The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, *etc.*). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the

amount of depreciation taken each period must also be maintained.

12. *Donations and contributions.*

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the governmental unit, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grant Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. *Employee morale, health, and welfare costs.*

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. *Entertainment costs.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. *Equipment and other capital expenditures.*

a. For purposes of this section 15, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to Attachment B, section 15.b.(1), (2), and (3), capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

8. Attachment B, sections 19. through 21. are revised to read follows:

19. *General government expenses.*

a. The general costs of government are unallowable (except as provided in Attachment B, section 43, Travel costs). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally-recognized Indian tribal government;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, *etc.*, whether incurred for purposes of legislation or executive direction;

(3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by program statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

b. For federally-recognized Indian tribal governments and Councils of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating

Federal programs by the chief executive and his staff is allowable.

20. *Goods or services for personal use.* Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. *Idle facilities and idle capacity.*

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: (a) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.,* insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

9. Attachment B, section 23. is revised to read as follows:

23. *Interest.*

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in this section 23.b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred which are associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable subject to the conditions in sections (1) through (4) of this section 23.b. Financing costs (including interest) paid or incurred on or after September 1, 1995 for land or associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1) through (4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) For debt arrangements over $1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, governmental units shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (*i.e.,* usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(5) Interest attributable to fully depreciated assets is unallowable.

10. Redesignated Attachment B, section 24. is amended by designating the current text as section a. and adding a new section 24.b. to read as follows:

24. *Lobbying.*

* * * * *

b. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

11. Attachment B, sections 26. through 30. are revised to read as follows:

26. *Materials and supplies costs.*

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

27. *Meetings and conferences.*

Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information,

are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. *But see* Attachment B, section 14, Entertainment.

28. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

d. Costs of membership in organizations substantially engaged in lobbying are unallowable.

29. *Patent costs.*

a. The following costs relating to patent and copyright matters are allowable:

(1) Cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

(2) Cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(3) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but *see* Attachment B, sections 32, Professional service costs, and 38, Royalties and other costs for use of patents and copyrights).

b. The following costs related to patent and copyright matter are unallowable:

(1) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award,

(2) Costs in connection with filing and prosecuting any foreign patent application, or

(3) Any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but *see* Attachment B, section 38., Royalties and other costs for use of patents and copyrights).

30. *Plant and homeland security costs.*

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section 15., Equipment and other capital expenditures, of this circular.

12. Attachment B, section 32. is revised to read as follows:

32. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable, subject to sections 32.b. and c. when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

In addition, legal and related services are limited under Attachment B, section 10.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the governmental unit's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in section 32.b, retainer fees to be allowable must be supported by available or rendered evidence of *bona fide* services available or rendered.

13. Attachment B, section 34. is revised to read as follows:

34. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the governmental unit.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

14. Attachment B, sections 36. through 39. are revised to read as follows:

36. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

37. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in sections b. through d. of this section 37, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in Attachment B, section 37.b.) that would be allowed had title to the property vested in the

governmental unit. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of a governmental unit; (ii) governmental units under common control through common officers, directors, or members; and (iii) a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a governmental unit may establish a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection b) that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in Attachment B, section 23. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the governmental unit purchased the facility.

38. *Royalties and other costs for the use of patents.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.*:

(1) Royalties paid to persons, including corporations, affiliated with the governmental unit.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a governmental unit.

c. In any case involving a patent or copyright formerly owned by the governmental unit, the amount of royalty allowed should not exceed the cost which would have been allowed had the governmental unit retained title thereto.

39. *Selling and marketing.* Costs of selling and marketing any products or services of the governmental unit are unallowable (unless allowed under Attachment B, section 1. as allowable public relations costs or under Attachment B, section 33. as allowable proposal costs.

22. Attachment B, section 41. is revised to read as follows:

41. *Termination costs applicable to Federal awards.*

Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. The cost of items reasonably usable on the governmental unit's other work shall not be allowable unless the governmental unit submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the governmental unit, the awarding agency should consider the governmental unit's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the governmental unit shall be regarded as evidence that such items are reasonably usable on the governmental unit's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the governmental unit, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the governmental unit to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the governmental unit,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) the governmental unit makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (*see* section__.44 of the Grants Management Common Rule implementing OMB Circular A–102); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with sections__.31 and __.32 of the

Grants Management Common Rule implementing OMB Circular A–102.

f. Claims under subawards, including the allocable portion of claims which are common to the Federal award, and to other work of the governmental unit are generally allowable.

An appropriate share of the governmental unit's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

15. Attachment B, section 43. is revised to read as follows:

43. *Travel costs.*

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit's non-federally-sponsored activities. Notwithstanding the provisions of Attachment B, section 19, General government expenses, travel costs of officials covered by that section are allowable with the prior approval of an awarding agency when they are specifically related to Federal awards.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) require circuitous routing;

(b) require travel during unreasonable hours;

(c) excessively prolong travel;

(d) result in additional costs that would offset the transportation savings; or

(e) offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following: (a) that such airfare was not available in the specific case; or (b) that it is the governmental unit's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in section 43.c., is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a governmental unit located in a foreign country means travel outside that country.

C. Amendments to A–122

1. Revise the table of contents to Attachment B as follows:

Attachment B.—Selected Items of Cost

Table of Contents

2. Redesignate the following paragraphs in Appendix B:

a. Paragraph 2. is redesignated as paragraph 3.

b. Paragraph 7. is redesignated as paragraph 8.

c. Paragraph 18. is redesignated as paragraph 19.

d. Paragraph 19. is redesignated as paragraph 20.

e. Paragraph 33. is redesignated as paragraph 32.

f. Paragraph 34. is redesignated as paragraph 33.

g. Paragraph 38. is redesignated as paragraph 36.

h. Paragraph 42. is redesignated as paragraph 39.

i. Paragraph 44. is redesignated as paragraph 41.

j. Paragraph 45. is redesignated as paragraph 42.

k. Paragraph 51. is redesignated as paragraph 47.

l. Paragraph 53. is redesignated as paragraph 49.

m. Paragraph 54. is redesignated as paragraph 50.

n. Paragraph 56. is redesignated as paragraph 52.

3. Attachment B, paragraphs 1. and 2. are revised to read as follows:

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a Federal award (*See also* Attachment B, paragraphs 42., Recruiting, and paragraph 43., Relocation costs.);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one Federal award or for both sponsored work and other work of the organization, are allowable to the extent that the principles in Attachment A, paragraphs B. ("Direct Costs") and C. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs 1.c., d., and e.;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the organization, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

2. *Advisory councils.*

Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. Attachment B, paragraphs 4. through 7. are revised to read as follows:

4. *Audit costs and related services.*

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. *Also see* 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230(b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

5. In Attachment B, redesignated paragraph 8. is amended by redesignating paragraphs 8.f. through 8.i. as paragraphs 8.g. through 8.j. adding a new paragraph 8.f. and adding a new paragraph 8.k. to read as follows.

8. *Compensation for personal services.*

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f. Overtime, extra-pay shift, and multi-shift premiums. Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

(2) When employees are performing indirect functions, such as administration, maintenance, or accounting.

(3) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

(4) When lower overall cost to the Federal Government will result.

* * * * *

k. Severance pay.

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by

(a) Law,

(b) Employer-employee agreement,

(c) Established policy that constitutes, in effect, an implied agreement on the organization's part, or

(d) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(a) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(b) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

(c) Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

(d) Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

(e) Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

6. Attachment B, paragraph 9. is revised to read as follows:

9. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

The term "contingency reserve" excludes self-insurance reserves (*see* paragraphs Attachment B, 8.g.(3) and 22.a.(2)(d); pension funds (*see* paragraph 8.i.): and reserves for normal severance pay (*see* paragraph 8.k.).

7. Attachment B, paragraphs 11. through 15. are revised to read as follows:

11. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowance or depreciation. However, except as provided in Attachment B, paragraph 11.f., a combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.*, buildings, office equipment, computer equipment, *etc.*).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.

d. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life.

In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method.

Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

e. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (*e.g.*, plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (*i.e.*, the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under subparagraph d, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost.

The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (*e.g.*, plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell.

The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will

be subject to the 6⅔ percent equipment use allowance limitation.

h. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. *Donations and contributions.*

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the organization, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to a organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with OMB Circular A–110.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the organization's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization; and

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Sec. __.23 of Circular A–110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

c. Donated goods or space.

(1) Donated goods; *i.e.*, expendable personal property/supplies, and donated use of space may be furnished to a organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Circular A–110. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

13. *Employee morale, health, and welfare costs.*

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

14. *Entertainment costs.*

Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. *Equipment and other capital expenditures.*

a. For purposes of this subparagraph, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the organization's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the organization for financial statement purposes, or $5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to this paragraph 15.b.(1), (2), and (3), capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, *see* Attachment B, paragraph 11., Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, *see* Attachment B, paragraph 44., Rental costs of buildings and equipment, for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the

otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

8. Attachment B, paragraphs 17. and 18., are revised to read as follows:

17. *Fund raising and investment management costs.*

a. Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Fundraising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Attachment A.

18. *Gains and losses on depreciable assets.*

a.(1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under Attachment B, paragraph 11.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Attachment B, paragraph 22.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 11.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subparagraph a shall be excluded in computing award costs.

9. Attachment B, paragraph 21. is revised to read as follows:

21. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: (a) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

10. Attachment B, paragraph 23. is revised to read as follows:

23. *Interest.* a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the organization's own funds, however represented, are unallowable. However, interest on debt incurred after September 29, 1995 to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after September 29, 1995 and used in support of Federal awards is allowable, provided that:

(1) For facilities acquisitions (excluding renovations and alterations) costing over $10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

(a) A statement of purpose and justification for facility acquisition or replacement;

(b) A statement as to why current facilities are not adequate;

(c) A statement of planned future use of the facility;

(d) A description of the financing agreement to be arranged for the facility;

(e) A summary of the building contract with estimated cost information and statement of source and use of funds;

(f) A schedule of planned occupancy dates.

(2) For facilities costing over $500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of Sections __.30 through __.37 of Circular A–110, which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's

length") third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(3) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third party.

(4) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(5) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subparagraph (b). For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(6) Organizations are also subject to the following conditions:

(a) Interest on debt incurred to finance or refinance assets acquired before or reacquired after September 29, 1995, is not allowable.

(b) Interest attributable to fully depreciated assets is unallowable.

(c) For debt arrangements over $1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(d) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(e) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated ("arm's length") third party.

b. For non-profit organizations subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of subparagraph a do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

c. The following definitions are to be used for purposes of this paragraph:

(1) Re-acquired assets means assets held by the non-profit organization prior to September 29, 1995 that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) Initial equity contribution means the amount or value of contributions made by organizations for the acquisition of the asset or prior to occupancy of facilities.

(3) Asset costs means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

11. Attachment B, paragraph 25. is amended by adding a new sub-paragraph d. at the end to read as follows:

25. *Lobbying.*

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d. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

12. Attachment B, paragraph 26. is amended by revising the title to read as follows:

26. *Losses on other awards or contracts.*

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13. Attachment B, paragraphs 27. through 30. are revised to read as follows:

27. *Maintenance and repair costs.*

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (*see* Attachment B paragraph 15.).

28. *Materials and supplies costs.*

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

29. *Meetings and conferences.*

Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But *see* Attachment B, paragraphs 14., Entertainment, and 34., Participant support costs.

30. *Memberships, subscriptions, and professional activities.*

a. Costs of the organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

14. Attachment B, paragraphs 34. and 35. are revised to read as follows:

34. *Patent costs.*

a. The following costs relating to patent and copyright matters are allowable:

(1) Cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

(2) Cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(3) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but *see* Attachment B, paragraphs 37., Professional service costs, and 44., Royalties and other costs for use of patents and copyrights).

b. The following costs related to patent and copyright matter are unallowable:

(1) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award.

(2) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but *see* Attachment B, paragraph 44., Royalties and other costs for use of patents and copyrights).

35. *Plant and homeland security costs.*

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; *etc.* Capital expenditures for homeland and plant security purposes are subject to Attachment B, paragraph 15., Equipment and other capital expenditures, of this circular.

15. In Attachment B, redesignated paragraph 36. is amended by revising the title to read as follows:

36. *Pre-agreement costs.*

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16. Attachment B, paragraphs 37. and 38. are revised to read as follows:

37. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to subparagraphs b. and c. of this paragraph 37. when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

In addition, legal and related services are limited under Attachment B, paragraph 10.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the organization's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in this Attachment B, paragraph 37.b., retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

38. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

17. Attachment B, paragraph 40 is revised to read as follows:

40. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition

existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

18. Attachment B, paragraphs 43. through 46., are revised to read as follows:

43. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in subparagraphs b. through d. of this paragraph 43., rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in subparagraph b. of this paragraph 43.) that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of an organization;

(2) Organizations under common control through common officers, directors, or members; and

(3) An organization and a director, trustee, officer, or key employee of the organization or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

For example, an organization may establish a separate corporation for the sole purpose of owning property and leasing it back to the organization.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subparagraph b. of this paragaph 43.) that would be allowed had the organization purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in Attachment B, paragraph 23. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the organization purchased the facility.

44. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

45. *Selling and marketing.* Costs of selling and marketing any products or services of the organization are unallowable (unless allowed under Attachment B, paragraph 1, as allowable public relations cost. However, these costs are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

46. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either 46.b. or c. and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under Attachment A, paragraph 5, of this circular.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate against federally-supported activities of the organization, including usage by the organization for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Rates shall be adjusted at least biennially, and shall take into consideration over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the organization to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

19. Attachment B, paragraph 48, is revised to read as follows:

48. *Termination costs applicable to Federal awards.*

Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued

immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the organization,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, special machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (*see* section __.61 of Circular A–110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with sections __.32 through __.37 of Circular A–110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs e.(1) and (2) of this paragraph 48. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under sub awards, including the allocable portion of claims which are common to the Federal award, and to other work of the organization are generally allowable.

An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

20. In Attachment B, redesignated paragraph 49. is amended by revising the title to read as follows:

49. *Training costs.*

* * * * *

21. Attachment B, paragraph 51. is revised to read as follows:

51. *Travel costs.*

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the organization's non-federally-sponsored activities.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the organization in its regular operations as the result of the organization's written travel policy. In the absence of an acceptable, written organization policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) Require circuitous routing;

(b) Require travel during unreasonable hours;

(c) Excessively prolong travel;

(d) Result in additional costs that would offset the transportation savings; or

(e) Offer accommodations not reasonably adequate for the traveler's medical needs. The organization must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question an organization's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the organization can demonstrate either of the following: (a) that such airfare was not available in the specific case; or (b) that it is the organization's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by organization-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in paragraph c. of this paragraph 51., is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for an organization located in a foreign country means travel outside that country.

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S. 1904/P.L. 108–225

To designate the United States courthouse located at 400 North Miami Avenue in Miami, Florida, as the "Wilkie D. Ferguson, Jr. United States Courthouse". (May 7, 2004; 118 Stat. 641)

S. 2022/P.L. 108–226

To designate the Federal building located at 250 West Cherry Street in Carbondale, Illinois the "Senator Paul Simon Federal Building". (May 7, 2004; 118 Stat. 642)

S. 2043/P.L. 108–227

To designate a Federal building in Harrisburg, Pennsylvania, as the "Ronald Reagan Federal Building". (May 7, 2004; 118 Stat. 643)

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0-999	(869-052-00047-7)	50.00	Jan. 1, 2004
1000-End	(869-052-00048-5)	60.00	Jan. 1, 2004
17 Parts:			
1-199	(869-050-00049-1)	50.00	Apr. 1, 2003
200-239	(869-050-00050-4)	58.00	Apr. 1, 2003
240-End	(869-050-00051-2)	62.00	Apr. 1, 2003
18 Parts:			
1-399	(869-050-00052-1)	62.00	Apr. 1, 2003
400-End	(869-050-00053-9)	25.00	Apr. 1, 2003
19 Parts:			
1-140	(869-050-00054-7)	60.00	Apr. 1, 2003
141-199	(869-050-00055-5)	58.00	Apr. 1, 2003
200-End	(869-050-00056-3)	30.00	Apr. 1, 2003
20 Parts:			
1-399	(869-050-00057-1)	50.00	Apr. 1, 2003
400-499	(869-050-00058-0)	63.00	Apr. 1, 2003
500-End	(869-050-00059-8)	63.00	Apr. 1, 2003
21 Parts:			
1-99	(869-050-00060-1)	40.00	Apr. 1, 2003
100-169	(869-050-00061-0)	47.00	Apr. 1, 2003
170-199	(869-050-00062-8)	50.00	Apr. 1, 2003
200-299	(869-050-00063-6)	17.00	Apr. 1, 2003
300-499	(869-050-00064-4)	29.00	Apr. 1, 2003
500-599	(869-050-00065-2)	47.00	Apr. 1, 2003
600-799	(869-050-00066-1)	15.00	Apr. 1, 2003
800-1299	(869-050-00067-9)	58.00	Apr. 1, 2003
1300-End	(869-050-00068-7)	22.00	Apr. 1, 2003
22 Parts:			
1-299	(869-050-00069-5)	62.00	Apr. 1, 2003
300-End	(869-050-00070-9)	44.00	Apr. 1, 2003
23	(869-050-00071-7)	44.00	Apr. 1, 2003
24 Parts:			
0-199	(869-050-00072-5)	58.00	Apr. 1, 2003
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1700-End	(869-050-00076-8)	30.00	Apr. 1, 2003
25	(869-050-00077-6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0-1-1.60	(869-050-00078-4)	49.00	Apr. 1, 2003
§§ 1.61-1.169	(869-050-00079-2)	63.00	Apr. 1, 2003
§§ 1.170-1.300	(869-050-00080-6)	57.00	Apr. 1, 2003
§§ 1.301-1.400	(869-050-00081-4)	46.00	Apr. 1, 2003
§§ 1.401-1.440	(869-050-00082-2)	61.00	Apr. 1, 2003
§§ 1.441-1.500	(869-050-00083-1)	50.00	Apr. 1, 2003
§§ 1.501-1.640	(869-050-00084-9)	49.00	Apr. 1, 2003
§§ 1.641-1.850	(869-050-00085-7)	60.00	Apr. 1, 2003
§§ 1.851-1.907	(869-050-00086-5)	60.00	Apr. 1, 2003
§§ 1.908-1.1000	(869-050-00087-3)	60.00	Apr. 1, 2003
§§ 1.1001-1.1400	(869-050-00088-1)	61.00	Apr. 1, 2003
§§ 1.1401-1.1503-2A	(869-050-00089-0)	50.00	Apr. 1, 2003
§§ 1.1551-End	(869-050-00090-3)	50.00	Apr. 1, 2003
2-29	(869-050-00091-1)	60.00	Apr. 1, 2003
30-39	(869-050-00092-0)	41.00	Apr. 1, 2003
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50-299	(869-050-00094-6)	41.00	Apr. 1, 2003
300-499	(869-050-00095-4)	61.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
500-599	(869-050-00096-2)	12.00	[5]Apr. 1, 2003
600-End	(869-050-00097-1)	17.00	Apr. 1, 2003
27 Parts:			
1-199	(869-050-00098-9)	63.00	Apr. 1, 2003
200-End	(869-050-00099-7)	25.00	Apr. 1, 2003
28 Parts:			
0-42	(869-050-00100-4)	61.00	July 1, 2003
43-End	(869-050-00101-2)	58.00	July 1, 2003
29 Parts:			
0-99	(869-050-00102-1)	50.00	July 1, 2003
100-499	(869-050-00103-9)	22.00	July 1, 2003
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1910 (§§ 1910.1000 to end)	(869-050-00107-1)	46.00	July 1, 2003
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30 Parts:			
1-199	(869-050-00111-0)	57.00	July 1, 2003
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33 Parts:			
1-124	(869-050-00122-5)	55.00	July 1, 2003
125-199	(869-050-00123-3)	61.00	July 1, 2003
200-End	(869-050-00124-1)	50.00	July 1, 2003
34 Parts:			
1-299	(869-050-00125-0)	49.00	July 1, 2003
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35	(869-050-00128-4)	10.00	[6]July 1, 2003
36 Parts			
1-199	(869-050-00129-2)	37.00	July 1, 2003
200-299	(869-050-00130-6)	37.00	July 1, 2003
300-End	(869-050-00131-4)	61.00	July 1, 2003
37	(869-050-00132-2)	50.00	July 1, 2003
38 Parts:			
0-17	(869-050-00133-1)	58.00	July 1, 2003
18-End	(869-050-00134-9)	62.00	July 1, 2003
39	(869-050-00135-7)	41.00	July 1, 2003
40 Parts:			
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50-51	(869-050-00137-3)	44.00	July 1, 2003
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790-End	(869-050-00164-1)	58.00	July 1, 2003
41 Chapters:			
1, 1-1 to 1-10		13.00	[3]July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
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42 Parts:			
1-399	(869-050-00169-1)	60.00	Oct. 1, 2003
400-429	(869-050-00170-5)	62.00	Oct. 1, 2003
430-End	(869-050-00171-3)	64.00	Oct. 1, 2003
43 Parts:			
1-999	(869-050-00172-1)	55.00	Oct. 1, 2003
1000-end	(869-050-00173-0)	62.00	Oct. 1, 2003
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45 Parts:			
1-199	(869-050-00175-6)	60.00	Oct. 1, 2003
200-499	(869-050-00176-4)	33.00	Oct. 1, 2003
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46 Parts:			
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48 Chapters:			
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49 Parts:			
1-99	(869-050-00200-1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
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50 Parts:			
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17.96–17.99(h)	(869–050–00210–8)	61.00	Oct. 1, 2003
17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

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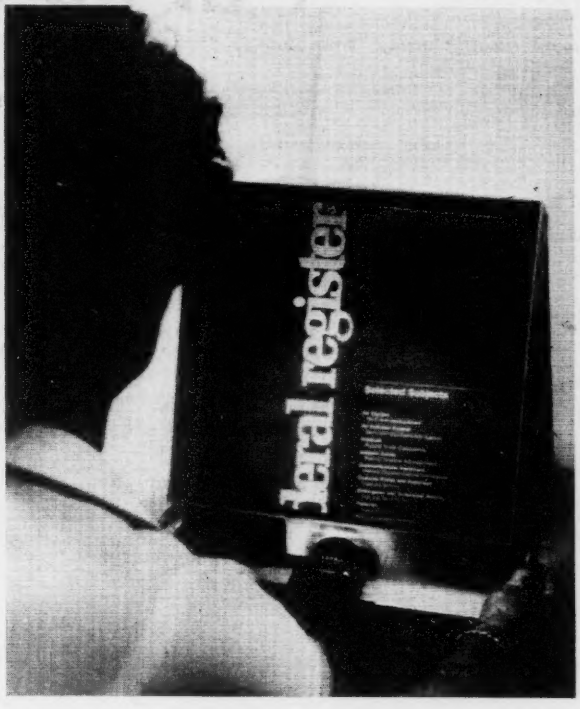

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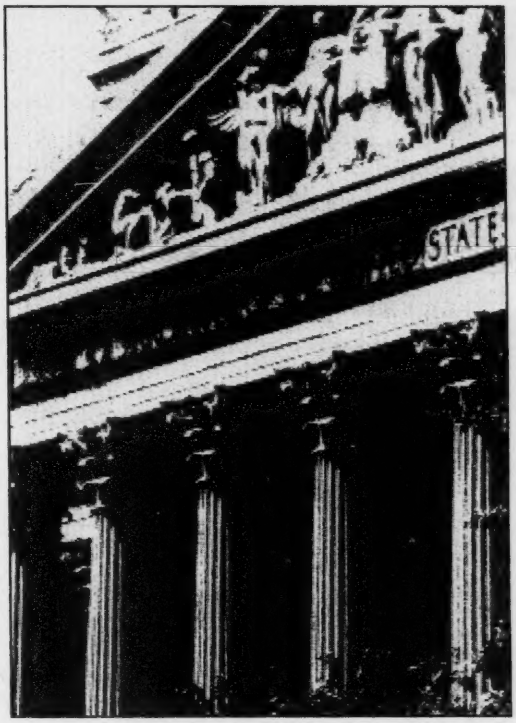

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